



भारत का राजपत्र The Gazette of India

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सं० 3]

नई दिल्ली, शनिवार, जनवरी 17, 1998/पौष 27, 1919

No. 3]

NEW DELHI, SATURDAY, JANUARY 17, 1998/PAUSA 27, 1919

इस भाग में निम्न पृष्ठ संख्या भी जम्मी है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

गृह मंत्रालय
(पुनर्वास प्रभाग)

MINISTRY OF HOME AFFAIRS
(Rehabilitation Division)

नई दिल्ली, 9 दिसम्बर, 1997

New Delhi, the 9th December, 1997

का. आ. 124.—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम, 1954 (1954 का अधिनियम सं. 44) की धारा 3 की (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्-द्वारा भूमि एवं भवन विभाग, राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार में संयुक्त सचिव, श्री बी. एस. भल्ला, आई. ए. एस. को संयुक्त सचिव के बतौर अपने स्वयं के कर्तव्यों के प्रतिरिक्त, उपरोक्त अधिनियम द्वारा अथवा उसके अन्तर्गत राष्ट्रीय राजधानी क्षेत्र, दिल्ली में स्थित निष्क्रान्त शहरी एवं ग्रामीण संपत्तियों के प्रबंध तथा निपटान के संबंध में बतौर उप मुख्य बंदोबस्त आयुक्त को सीपे गए कार्यों को करने के लिए उप मुख्य बंदोबस्त आयुक्त के रूप में नियुक्त करती है।

S.O. 124.—In exercise of powers conferred by Sub-Section (i) of Section 3 of the Displaced persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954), the Central Government hereby appoints Shri B. S. Bhalla, I.A.S., Joint Secretary in the Land and Building Department, Government of National Capital Territory of Delhi, as Deputy Chief Settlement Commissioner for the purposes of performing, in addition to his own duties as Joint Secretary, the functions assigned to him as a Deputy Chief Settlement Commissioner by or under the aforesaid Act, in respect of the management and disposal of evacuee urban and rural properties and lands situated in the National Capital Territory of Delhi.

[सं. 1 (6) 93-बंदोबस्त (क)]
सुरजीत सिंह, अवसर सचिव

[No. 1(6)/93-Settlement(A)]
SURJIT SINGH, Under Secy.

नई दिल्ली, 9 दिसम्बर, 1997

का. आ. 125.— विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम, 1954 (अधिनियम सं. 1954 का 44) की धारा 34 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त एतद्वारा दिनांक 9-12-97 को अधिसूचना सं. 1 (6)/93 बंदोबस्त (क) के तहत उप मुख्य बंदोबस्त आयुक्त के रूप में नियुक्त राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार के भूमि एवं भवन विभाग में संयुक्त सचिव श्री बी. एस. भल्ला, आई. ए. एस. को मुख्य बंदोबस्त आयुक्त की निम्नलिखित शक्तियाँ सौंपता हूँ :—

- (i) उक्त अधिनियम की धारा 23 के अंतर्गत अपील सुनने की शक्तियाँ।
- (ii) उक्त अधिनियम की धारा 24 के अंतर्गत संशोधन सुनने की शक्तियाँ।
- (iii) उक्त अधिनियम की धारा 28 के अंतर्गत मामलों को हस्तांतरण करने की शक्तियाँ।

[संख्या 1 (6)/93—बंदोबस्त (ख)]

एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त

New Delhi, the 9th December, 1997

S.O. 125.—In exercise of powers conferred by Sub-Section (2) of Section 34 of the Displaced persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954), I, S. K. Chhatto-padhyay, Chief Settlement Commissioner, hereby delegate to Shri B. S. Bhalla, I.A.S., Joint Secretary in the Land and Building Department, Government of National Capital Territory of Delhi, appointed as Deputy Chief Settlement Commissioner, vide Notification No. 1(6)/93-Settlement (A) dated 9th December, 1997 the following powers of the Chief Settlement Commissioner :—

- (i) Powers to hear appeals under Section 23 of the said Act.
- (ii) Powers to hear revision under Section 24 of the said Act.
- (iii) Powers to transfer cases under Section 28 of the said Act.

[No. 1(6)/93-Settlement(B)]

S. K. CHATTOPADHYAY, Chief Settlement Commissioner

नई दिल्ली, 9 दिसम्बर, 1997

का. आ. 126.—निष्क्रान्त संपत्ति प्रबंध अधिनियम, 1950 (अधिनियम 1950 की संख्या 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार के भूमि एवं भवन विभाग में संयुक्त सचिव श्री बी. एस. भल्ला, आई. ए. एस. को संयुक्त सचिव के रूप में अपने स्वयं के दायित्वों के अतिरिक्त राष्ट्रीय राजधानी क्षेत्र, दिल्ली में स्थित निष्क्रान्त शहरी तथा ग्रामीण सम्पत्तियों तथा भूमि के प्रबंध एवं निपटान के संबंध में उक्त अधिनियम के द्वारा प्रथवा उसके अधीन सहायक महाभिरक्षक के रूप में उन्हें सौंपे गए कार्यों के निष्पादन के उद्देश्य से उन्हें सहायक महाभिरक्षक नियुक्त करती है।

[संख्या 1 (6)/93 बंदोबस्त (ग)]

सुरजीत सिंह, भवन सचिव

New Delhi, the 9th December, 1997

S.O. 126.—In exercise of the powers conferred by Section 5 of the Administration of Evacuee Property Act, 1950 (Act No. 31 of 1950), the Central Government hereby appoints Shri B. S. Bhalla, I.A.S., Joint Secretary in the Land and Building Department, Government of National Capital Territory of Delhi as Assistant Custodian General for the purpose of performing, in addition to his own duties as Joint Secretary, the functions assigned to him as Assistant Custodian General by or under the aforesaid Act, in respect of management and disposal of evacuee urban and rural properties and land situated in the National Capital Territory of Delhi.

[No. 1(6)/93-Settlement(C)]
SURJIT SINGH, Under Secy.

नई दिल्ली, 9 दिसम्बर, 1997

का. आ. 127.—निष्क्रान्त संपत्ति प्रबंध अधिनियम 1950 (अधिनियम सं. 1950 का 31) की धारा 58 की उपधारा (3) द्वारा मुझे महाभिरक्षक के रूप में प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, एस. के. चट्टोपाध्याय, महाभिरक्षक एतद्वारा अधिसूचना सं. 1 (6)/93 बंदोबस्त (ग) दिनांक 9-12-97 द्वारा सहायक महाभिरक्षक के रूप में नियुक्त राष्ट्रीय राजधानी क्षेत्र, दिल्ली के भूमि एवं भवन विभाग में संयुक्त सचिव श्री बी. एस. भल्ला, आई. ए. एस. को महाभिरक्षक की निम्नलिखित शक्तियाँ सौंपता हूँ :—

- (i) उक्त अधिनियम की धारा 24 के अंतर्गत अपील सुनने की शक्तियाँ।
- (ii) अधिनियम की धारा 27 के अंतर्गत संशोधन की शक्तियाँ।
- (iii) अधिनियम की धारा 10 (2) (0) के अंतर्गत किसी निष्क्रान्त संपत्ति के हस्तांतरण के अनुमोदन की शक्तियाँ।

(iv) निष्क्रांत संसि प्रबंध अधिनियम (केन्द्रीय) नियम , 1950 के नियम 30-क के अंतर्गत मामलों के हस्तांतरण की शक्तियां ।

[सं. 1 (6)/93-बंदोबस्त (घ)]
एस. के. चट्टोपाध्याय, महाभिरक्षक

New Delhi, the 9th December, 1997

S.O. 127.—In exercise of the powers conferred on the as Custodian General by Sub-Section (3) of Section 55 of the Administration of Evacuee Property Act, 1950 (Act No. 31 of 1950), I, S. K. Chattopadhyay, Custodian General, hereby delegate to Shri B. S. Bhalla, I.A.S., Joint Secretary in the Land and Building Department, Government of National Capital Territory of Delhi appointed as Assistant Custodian General vide Notification No. 1(6)/93-Settlement(C), dated the 9th December, 1997 the following powers of the Custodian General :—

- (i) Powers under Section 24 of the said Act to hear appeals ;
- (ii) Powers of revision under Section 27 of the said Act ;
- (iii) Power of approval of transfer of any evacuee property under Section 10(2)(o) of the Act ;
- (iv) Power of transfer of cases under Rule 30-A of Administration of Evacuee Property Act, (Central) Rules, 1950.

[No. 1(6)/93-Settlement(D)]
S. K. CHATTOPADHYAY, Custodian General

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय)

कोयम्बतूर, 19 दिसम्बर, 1997

संख्या 6/97/सीमा शुल्क (एन टी)

का. आ. 128 :—सीमा शुल्क अधिनियम 1962 की धारा 152 खण्ड (ए) के अंतर्गत भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के दिनांक 1 जुलाई, 1994 के अधिसूचना संख्या 33 94 सीमा शुल्क (एन. टी.) के अधीन अधोहस्ताक्षरी को प्रत्यायोजित

शक्तियों का प्रयोग करते हुए, मै. वि. कु. अशताना, आयुक्त, सीमा शुल्क एवं केन्द्रीय उत्पाद शुल्क, कोयम्बतूर एतद्वारा तमिलनाडु, राज्य, सेलम जिला, ओमलूर तालूक के करुपूर ग्राम को सीमा शुल्क अधिनियम 1962 की धारा 9 के अंतर्गत 100% निर्यातानुमुख एकक (इ. ओ. यू.) के गठन के उद्देश्य से भाण्डागारण स्टेशन के रूप में घोषित करता हूँ। जैसा कि उद्योग मंत्रालय औद्योगिक अनुमोदन सचिवालय, नई दिल्ली द्वारा अनुमोदित है।

[फाइल पत्र सं. VIII/40/11/97—सीमा शुल्क]

वि. कु. अशताना, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(Office of the Commissioner of Central Excise and Customs)

Coimbatore, the 19th December, 1997

No. 6/97-CUSTOMS(NT)

S.O. 128.—In exercise of the powers delegated to the undersigned vide Notification No. 33/94-Cus(NT) dated 1st July, 1994 by the Government of India, Ministry of Finance, Department of Revenue, New Delhi, under clause (a) of Section 152 of the Customs Act, 1962, I, V. K. Ashtana, Commissioner of Central Excise and Customs, Coimbatore, hereby declare Karupur Village, Omalur Taluk, Salem District, State of Tamil Nadu, to be a warehousing station under Section 9 of the Customs Act, 1962 for the purpose of setting up of 100 per cent Export Oriented Unit, as approved by the Ministry of Industry, Secretariate of Industrial Approval, New Delhi.

[File C. No. VIII/40/11/97-Cus. Pol.]

V. K. ASHTANA, Commissioner

(आर्थिक कार्य विभाग)

(बीमा प्रभाग)

नई दिल्ली, 19 दिसम्बर, 1997

का. आ. 129 :—दिनांक 19 नवम्बर, 1996 के अधिसूचना सं. 15 (3) 96-बीमा-5 के तहत नियुक्त श्री किरीट एस. पारिख, निदेशक, इंदिरा गांधी विकास अनुसंधान संस्थान के भारतीय जीवन बीमा निगम की सदस्यता से उनका त्याग-पत्र तत्काल प्रभाव से एतद्वारा स्वीकार किया जाता है।

[फा. सं. 15/1/96-बीमा -V]

आर. रंगनाथ, निदेशक

(Department of Economic Affairs)

नई दिल्ली, 31 दिसम्बर, 1997

(Insurance Division)

New Delhi, the 19th December, 1997

S.O. 129.—The resignation of Dr. Kirit S. Parikh, Director, Indira Gandhi Institute of Development Research, Mumbai, a Member of the Life Insurance Corporation of India appointed vide Notification No. 15/3/92-Ins. V dated 19th November, 1996 is hereby accepted with immediate effect.

[F. No. 15/1/96/Ins. V]

R. RANGANATH, Director

(बैंकिंग प्रभाग)

नई दिल्ली, 31 दिसम्बर, 1997

का०प्रा० 130.—रूग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (5) द्वारा प्रदत्त शक्तियों के अनुसरण में, केन्द्रीय सरकार, एतद्वारा औद्योगिक एवं वित्तीय पुनर्निर्माण बोर्ड के सदस्य श्री एम एम एस श्रीवास्तव को 1 जनवरी, 1998 से 30 अप्रैल, 98 तक की और अवधि के लिए औद्योगिक एवं वित्तीय पुनर्निर्माण बोर्ड के अध्यक्ष के रूप में कार्य करने के लिए प्राधिकृत करती है।

[एफ० सं० 7/17/96-बी ओ I(1)]

सुधीर श्रीवास्तव, निदेशक

(Banking Division)

New Delhi, the 31st December, 1997

S.O. 130.—In pursutnce of the powers conferred by sub-section (5) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby authorises Shri M. M. S. Srivastava, Member, Board for Industrial and Financial Reconstruction, to act as Chairman of the Board for Industrial and Financial Reconstruction for the further period from 1st January, 1998 and upto 30th April, 1998.

[F. No. 7/17/96-B.O.I(1)]

SUDHIR SHRIVASTAVA, Director

का०प्रा० 131.—रूग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 (1985 का 1) की धारा 6 की उपधारा (2) के साथ पठित धारा 4 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री एस एल कपूर को 1 जनवरी, 1998 से 30 अप्रैल, 98 तक की अवधि के लिए औद्योगिक तथा वित्तीय पुनर्निर्माण बोर्ड के सदस्य के रूप में पुनः नियुक्त करती है।

[एफ० सं० 7/17/96-बी ओ (ii)]

सुधीर श्रीवास्तव, निदेशक

New Delhi, the 31st December, 1997

S.O. 131.—In pursuance of the powers conferred by sub-section (2) of Section 4 read with sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby re-appoints Shri S. L. Kapur, as a Member of the Board for Industrial and Financial Reconstruction from 1st January, 1998 and upto 30th April, 1998.

[F. No. 7/17/96-B.O.I(ii)]

SUDHIR SHRIVASTAVA, Director

कार्यालय प्रायुक्त, केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क

इंदौर, 31 दिसम्बर, 1997

का०प्रा० 132.—प्रायुक्त कार्यालय, केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क इंदौर के निम्नलिखित समूह "ख" अधिकारी निवर्तन प्रायु प्राप्त करने पर उनके नाम के आगे दर्शाए गए दिनांक को शासकीय सेवा से निवृत्त हुए :—

क्र० सं०	अधिकारी का नाम	पदनाम	निवर्तन प्रायु प्राप्त करने पर सेवा निवृत्त की तारीख
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1.	श्री एन० पी० मालवीय	अधीक्षक	31-10-97 (अपरान्ह)
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1	2	3	4
2	श्री जे. एम. खर्चे	अधीक्षक	30-11-97 (अपरान्त)
3	श्री जी. पी. श्रीवास्तव	अधीक्षक	30-11-97 (अपरान्त)

[फा. सं. II(3) 9-गोप/93/5594]

शोभा राम, उप आयुक्त (कार्मिक एवं सतर्कता)

OFFICE OF THE COMMISSIONER, CENTRAL
EXCISE & CUSTOMS

Indore, the 31st December, 1997

S.O. 132 :—The following Group 'B' Officers of office of the Commissioner of Central Excise & Customs, Indore having attained the age of Superannuation retired from Government Service from the dates as shown against their names :—

S. No.	Name of the Officer	Designation	Date of retirement on Superannuation.
01.	Shri N.P. Matviya	Superintendent	31.10.97(AN)
02.	" J.S. Kharche	Superintendent	30.11.97(AN)
03.	" G.P. Shrivastava	Superintendent	30.11.97(AN)

[F.NO. II(3)/9-Con/93/5594]

SHOBHA RAM, Dy. Commissioner (P & V)

वाणिज्य मंत्रालय

नई दिल्ली, 30 दिसम्बर, 1997

फा.सं. 133.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में वाणिज्य मंत्रालय के अर्न्तगत आने वाले निम्नलिखित कार्यालयों को, जिनके 80 17 GI/98—2

प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यमाध्यक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. एम एम टी सी लि.
उप क्षेत्रीय कार्यालय,
एच/एक्स/127, ई-7
एक्सटेंशन अररा कालोनी,
भोपाल, मध्य प्रदेश-452001

2. एम एम टी सी लि.
क्षेत्रीय कार्यालय,
12/5 बी, गीता भवन रोड,
मनोरमा गंज,
इंदौर, मध्य प्रदेश-452001

3. एम एम टी सी लि.
एम ए 68, आदित्यपुर
जमशेदपुर-831013
जिला-सिंह भूम (ईस्ट)
(बिहार)

4. एम एम टी सी लि.
उर्वरक प्रभाग,
प्रथम तल, श्याम भवन,
वैस्ट योर्ग, कैनाम रोड,
पटना-800001 (बिहार)

[सं. ई-11013/1/93-हिन्दी]

राम कुमार कलोरिया, निदेशक (राजभाषा)

MINISTRY OF COMMERCE

New Delhi, the 30th December, 1997

S.O. 133 :—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official purposes of the Union), Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Commerce where of more than 80% staff have acquired working Knowledge of Hindi :—

1. M.M.T.C. Limited Sub-Divisional Office, H/X/127-E-7 Extention Arera Colony, Bhopal M.P. 452001.	2. M.M.T.C. Limited. Reginal Office, 12/5 B Geeta Bhawan Road, Manorma Ganj, Indore, M.P. 452001.
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- | | |
|---|--|
| 3. M.M.T.C. Limited,
M A 68 Adityapur,
Jameshedpur-831013,
Distt. Singh Bhoom
(East Bihar). | 4. M.M.T.C. Limited,
Fertilizer Division,
1st floor, Shyam
Bhavan West Boring,
Canal Road,
Patna-800001 (Bihar) |
|---|--|

[No. E-11013/1/93-Hindi]

R.K. CALORIYA, Director (O.L.)

परमाणु ऊर्जा विभाग

मुम्बई, 19 दिसम्बर, 1997

का०आ० 134—केन्द्रीय सरकार परमाणु ऊर्जा विभाग के परमाणु खनिज प्रभाग के एक यूनिट उत्तर पश्चिमी क्षेत्रीय कार्यालय, जयपुर को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में अधिसूचित करती है।

[सं० 6/7/94-हिन्दी]

अ० दासगुप्ता, संयुक्त सचिव

DEPARTMENT OF ATOMIC ENERGY

Mumbai, the 19th December, 1997

S.O. 134.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the North-Western Regional Office, Jaipur, which is a Unit of the Atomic Minerals Division of the Department of Atomic Energy, more than 80 per cent staff whereof has required a working knowledge of Hindi.

[No. 6/7/94-Hindi]

A. DASGUPTA, Jt. Secy.

कृषि मंत्रालय

(पशुपालन एवं डेयरी विभाग)

नई दिल्ली, 7 जनवरी, 1998

का०आ० 135—पशुधन आयात अधिनियम, 1898 (1898 का 9) के खंड 2 की धारा (ख) तथा खंड 3 उपखंड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार आस्ट्रेलिया, चीन, डेनमार्क, इटली, नीदरलैंड, नेपाल, उत्तरी आयरलैंड (यू.के.) तथा पाकिस्तान में पक्षी एनफ्लूजा के कथित प्रकोप को देखते हुए इन देशों से इस अधिसूचना की जारी होने की तारीख से छह महीने की अवधि के लिए भारत में पालतू तथा जंगली पक्षियों, एक दिन पुराने चूजों, टर्की जूजों तथा अन्य नव उत्पादित पक्षी प्रजातियों, अंडज उत्पत्तिशाला अंडों, पालतू और जंगली पक्षियों के बीज, पालतू और जंगली पक्षियों के ताजे मांस, पशु आहार के उपयोग के लिए अथवा औद्योगिक इस्तेमाल के लिए पशु मूल (पक्षियों से) के उत्पादों, रोगाणुसम सामग्री तथा जैविक उत्पादों (पक्षियों से) जिन्हें प्रसंस्कारित नहीं किया गया है, के आयात पर एनडू द्वारा प्रतिबंध लगाती है ताकि पक्षी एनफ्लूजा (फाउल प्लेग) वायरस को खत्म करने का सुनिश्चित किया जा सके।

[फाइल सं०-50-4/84-एल डी टी (ए. क्यू.)]

गोविन्द रा. पटवर्धन, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Animal Husbandry & Dairying)

New Delhi, the 7th January, 1998

S.O. 135.—In exercise of powers conferred by Clause (b) of Section 2 and sub-section (i) of Section 3 of the Livestock Importation Act, 1898 (9 of 1898), the Central Government hereby prohibits import into India of domestic and wild birds; day old chicks, turkeys poult and other newly-hatched avian species; hatching eggs; semen of domestic and wild birds; fresh meat of domestic and wild birds; products of animal origin (from birds) destined for use in animal feeding or for industrial use; pathological material and biological products (from birds) which have not been processed to ensure the destruction of Avian Influenza (Fowl Plague) virus from Australia, China, Denmark, Italy, Netherlands, Nepal, North Ireland (U.K.) and Kakis-Kan for a period of 6 months from the date of issue of this notification in view of reported outbreak of avian influenza in these countries.

[File No. 50-4/84-LDT(AQ)]

G. R. PATWARDHAN, Jt. Secy.

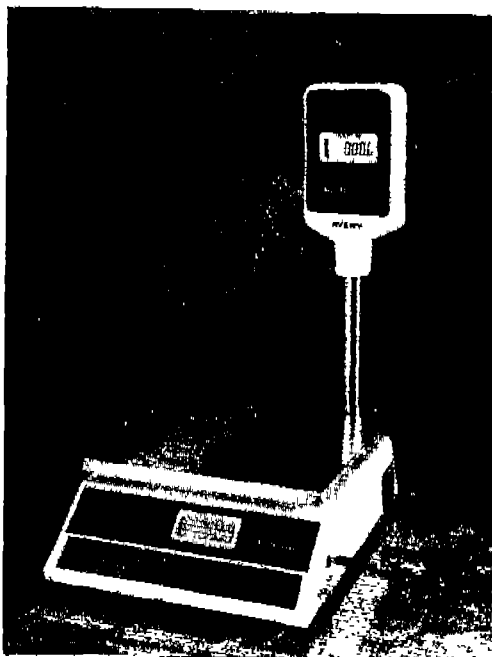
खाद्य और उपभोक्ता मामले मंत्रालय

(उपभोक्ता मामले विभाग)

नई दिल्ली, 1 जनवरी, 1998

का. आ. 136.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट (नीचे आकृति देखिए) पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि वह लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;—

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, (मध्यम) यथार्थता वर्ग III के ए 611 डब्ल्यू सिरीज के ए 611 डब्ल्यू ब्रांड नाम वाले स्वतः सूचक गैर-स्वचालित इलेक्ट्रॉनिक टेबल टॉप तोलन मशीन के माडल का (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मैसर्स एवरी ईंडिया लिमिटेड, प्लॉट सं. 50—59, सेक्टर- 25, बल्लभगढ़-121004 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई०एन०डी०/09/97/19 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है ।



माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है जिसकी अधिकतम क्षमता 12 किलोग्राम और न्यूनतम क्षमता 40 ग्राम है । सत्यापन मापमान अन्तर (ई) 2 ग्राम है । इसमें 9.998 किलोग्राम तक व्यकलनात्मक प्रतिधारण टेयर प्रभाव है । आधार और प्लेटफार्म मृदु इस्पात के हैं । भारग्राही आयाताकार क्रास सैक्शन का है जिसका आकार पार्श्व 280 × 240 मिलीमीटर है । 5 अंकों का 15 मिलीमीटर प्रकाश उत्सर्जन डायोड संप्रदर्श तोलन परिणाम उपदर्शित करता है । यह उपकरण 230 वोल्ट 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रदाय द्वारा प्रचालित 6वीं 300 एम ए के एसी/डी सी एडोप्टर पर प्रचालित होता है ।

आगे, केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धान्त के अनुसार और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित 6 किलोग्राम/1 ग्राम, 30 किलोग्राम/5 ग्राम की अधिकतम क्षमता वाले समरूप मेक, यथार्थता और उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी हैं ।

[फा. सं. डब्ल्यू० एम 21(12)/97]

राजीव श्रीवास्तव, अपर सचिव

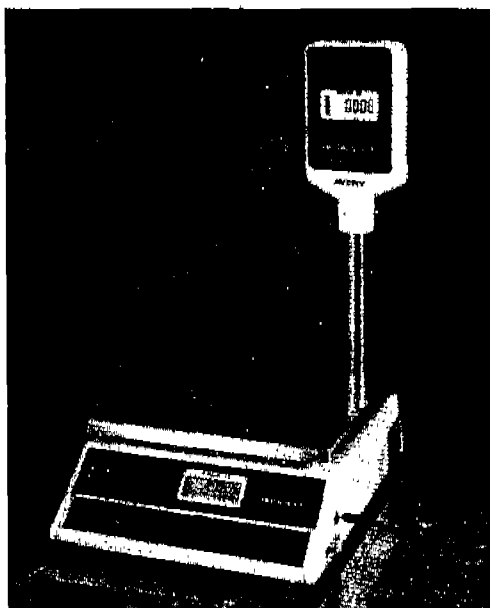
MINISTRY OF FOOD AND CONSUMER AFFAIRS**(Department of Consumer Affairs)**

New Delhi, the 1st January, 1998

S. O.136.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic electronic table top weighing machine of class III (medium) accuracy of A611W series with brand name "A611W" (hereinafter referred to as the Model) manufactured by M/s Avery India Limited, Plot Nos. 50-59, Sector 25, Ballabhgarh-121004, and which is assigned the approval mark IND/09/97/19;

The Model is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 12kg and minimum capacity of 40g. The verification scale interval (e) is 2 g. It has a subtractive retained tare effect upto 9.998 kg. The load receptor is of rectangular cross section of sides 280 × 240 millimetre. The 5 digits 15 mm LCD display indicates the weighing result. The instrument operates on AC/DC adaptor of 6V 300 mA operated by 230 volts, 50 Hertz alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 6kg/1g and 30kg/5g manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[File No. WM 21(12)/97]

RAJIV SRIVASTAVA, Addl. Secy.

नई दिल्ली, 1 जनवरी, 1998

का. आ.137.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत कि गई रिपोर्ट (नीचे आकृति देखिए) पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि यह लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा ;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, (मध्यम) यथार्थता वर्ग III के ए 611 ए मिरिज के "ए 611" बांड नाम वाले स्वतः सूचक गैर-स्वचालित इलैक्ट्रॉनिक टेबल टॉप तोलन मशीन के माडल का (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मैसर्स एबरी इंडिया लिमिटेड, प्लाट सं. 50-59 सेक्टर-25, बल्लभगढ़-121004 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई०एन०डी०/09/97/20 समन्देशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है ।



माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग III) का तोलन उपकरण है जिसकी अधिकतम क्षमता 12 किलोग्राम और न्यूनतम क्षमता 100 ग्राम है । सत्यापन मापमान अन्तर (ई) 5 ग्राम है । इसमें 9.995 किलोग्राम तक व्यकलनात्मक प्रतिधारण टेयर प्रभाव है । आधार और प्लेटफार्म मृदु इस्पात के हैं । भारग्राही आयाताकार क्रॉस सैक्शन का है जिसका आकार पार्श्व 280 × 240 मिलीमीटर है 5 अंकों का 15 मिलीमीटर प्रकाश उत्सर्जन डायोड संप्रदर्श तोलन परिणाम उपदर्शित करता है । यह उपकरण 230 वोल्ट 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रदाय द्वारा प्रचालित 6वीं 300 एम ए के एसी/डी सी एडोप्टर पर प्रचालित, होता है ।

आगे, केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धान्त के अनुसार और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित 6 किलोग्राम/2 ग्राम, और 30 किलो ग्राम/और 10 ग्राम की अधिकतम क्षमता वाले उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी हैं ।

[फा. सं. डब्ल्यू० एम 21(12)/97]

राजीव श्रीवास्तव, अपर सचिव

New Delhi, the 1st January, 1998

S. O. 137.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions:

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic electronic price computing table top weighing machine of class III (medium) accuracy of A611A series with brand name "A611A" (hereinafter referred to as the Model) manufactured by M/s Avery India Limited, Plot No. 50-59, Sector 25, Ballabhgarh-121004, and which is assigned the approval mark IND/09/97/20;

The Model is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 15kg and minimum capacity of 100g. The verification scale interval (e) is 5 g. It has a subtractive retained tare effect upto 9.995 kg. The load receptor is of rectangular cross section of sides 280 x 240 millimetre. The 5 digits 15 mm LCD display indicates the weighing result. The instrument operates on AC/DC adaptor of 6V 300 mA operated by 230 volts, 50 Hertz alternate current power supply;



Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 6kg/2g and 30kg/10g manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[File No. WM 21(12)/97]

RAJIV SRIVASTAVA, Addl. Secy.

श्रम मंत्रालय

AWARD

नई दिल्ली, 18 दिसम्बर, 1997

का.अ. 138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार से. नथरुचंद जे. पारेख एण्ड कंपनी के संबद्ध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक सन्निकर्ण, सं. II, मुम्बई, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 18-12-97 को प्राप्त हुआ था।

[सं. एन-31012/2/96-आईआर (विविध)]
बी.एम. डेविड, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 18th December, 1997

S.O. 138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Talakchand J. Parekh & Co. and their workman, which was received by the Central Government on the 18-12-1997.

[No. L-31012/2/96-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II
MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer
Reference No. CGIT-2/37 of 1996
Employers in relation to management of
M/s. Talakchand J. Parekh & Co.

AND

Their Workmen

APPEARANCES :

For the Employer : Mr. V. H. Kantharia, Advocate.

For the Workman : Mr. S. R. Wagh
Advocate.

MUMBAI, dated 19th November, 1997.

17 GI/98-4

The Govt. of India, Ministry of Labour by its Order No. L-31012/2/96-IR(Misc.) dated 14-8-1996 had referred to the following Industrial Dispute for adjudication:

“Whether the action of M/s. Talakchand J. Parekh & Co., in not reinstating the workman Shri Shivaji Vishnu Kamble w.e.f. 19-5-1995 with full back wages is legal and justified? If not, to what relief the workman is entitled to?”.

2. The Transport and Dock workers union Bombay filed a Statement of Claim at Exhibit-3. It is Contended that Shivaji Vishnu Kamble (thereinafter referred to as the workman) was in employment of M/s. Talakchand J. Parekh & Co. a licenced custom house agent. It conducts business of forwarding clearing and Shipping agents in Major Port of Mumbai.

3. The Union pleaded that the workman was illegally and without following due process of law terminated w.e.f. 19-5-1995. It is averred that he joined the services of the company in 1980 and was in continuous service till his termination.

4. The Union pleaded that on 18-5-95 at about 8.00 p.m. Subash Parekh partner of the company caught hold of the workman and beat him. He told him that he is dismissed from the service. The workman then lodged a police complaint for man-handling and also reported the incident to the union. On 22-5-1995 the union wrote a letter to the Assistant Labour Commissioner to admit the dispute in a conciliation and direct the company to reinstate him declaring his termination to be illegal. The matter could not be resolved.

5. The union pleaded that as per the industry wise agreement after putting ten years of service the junior clerk is to be promoted as a senior clerk. This demand was made by the workman to the company. The company failed to agree and terminated his services. Under such circumstances it is submitted that the action of the management be declared as illegal and the workman will be reinstated in service in continuity alongwith back wages.

The company resisted the claim by the written statement Exhibit-6. It is averred that the workman was in receipt of the amount totalling into Rs. 17,000 which was paid to him from time to time for many official expenses on the docks. The workman failed to submit the statement of accounts giving particulars of the official expenditure incurred out of the said amount. He was requested to give such a statement. Again on 18-5-1995 such a request was made. Then the workman picked up a quarrel with the partner of the company and stopped attending the duties from 19-5-95. He then filed a complaint of unfair labour practice before the Labour Court Maharashtra, Mumbai. He also filed a complaint before Assistant Labour Commissioner. The complaint of unfair labour practice came to the disposed off as withdrawal at the instance of the workman. It is pleaded that before the conciliation proceedings the company filed its reply dated 15-5-95 and asserted that it did not terminate the services of the workman and he is free to join the duties forth with and he should submit the statement of accounts for the sum of Rs. 17,000 received by him as advance for incurring official expenses within one week from the date of resuming the duties. However, the workman failed to join the duties and submit the accounts. It is denied that the partner of the company assaulted the workman. It is asserted that they never terminated the services of the workman but he himself stopped attending the duty from 19-5-95. Under such circumstances it is submitted that the demand made by the workman is unjustified and he is not entitled to any of the reliefs.

7. The union filed a rejoinder at Exhibit-7. It reiterated the contention taken by it. It is asserted that the amount he received was properly accounted with the company. It is specifically denied that the workman received Rs. 17,000 as alleged. It is denied that the workman picked up a quarrel with the company when the accounts were demanded from him. It is averred that he did not stop attending the duties but his services were terminated.

8. The issues that fall for my consideration and my findings there on are as follows:—

Issues	Findings.
1. Whether the action of M/s. Talakchand	Not legal and justifi-

J. Parekh & Co. in not reinstating the workman Shri Shivaji Vishnu Kamble w.e.f. 19-5-1995 is with full back wages is legal and justified?

2. If not, what relief the workman is entitled to? As per order.

REASONS

9. To substantiate the claim the workman lead evidence at Exhibit-9. The company lead oral evidence of S. T. Parekh (Exhibit-11) and N. D. Doshi (Exhibit-13). They also relied on the documents which are produced alongwith Exhibit-8 & 15.

10. From the testimony of workman and the management witness it is not in dispute that the workman joined the services of the Company somewhere in 1980 as a junior clerk. He continued to work till 18-5-95. It is also not in dispute that on 18-5-95 there was some dispute between the workman and the partner of the company which resulted into the workman filing a complaint of unfair labour practice and also wrote to the union. The Union then wrote a letter to the Assistant Labour Commissioner demanding the dispute to be admitted in Conciliation. The demand of the union was declaring the termination of the workman to be illegal and reinstatement in service with full back wages.

11. The workman affirmed that when he was orally informed not to attend duties from 19-5-95 he was not paid any compensation as required under the law. He was not given one months notice wages nor paid the retrenchment compensation. It is not the case of the company that they did so. It can be further seen that it is not the contention of the company that departmental inquiry was conducted against the workman. But their case is that the workman stopped coming to the duties from 19-5-95. In other words he abandoned the duties.

12. Now it is to be seen whether the contention taken by the company is acceptable. In normal course nowadays when there is a dearth of an employment a person who had put about 15 years of service will not leave the job on his own. He is about 39 years of

age. It is not that he had given up the job with the hope that he will get another job. His conduct viz. filing of a complaint under unfair labour practice and moving the Assistant Labour Commissioner through union for termination supports his case that he was terminated and not that he abandoned the service.

13. Parekh (Exhibit-11) and Doshi (Exhibit-13) the witnesses for the management corroborates each other on the point that as per their usual practice they gave advance to the workman from time to time to meet out the daily expenses. They have produced extract from the Book of account (Exhibit-8|1) showing that in all the workman was given Rs. 17,000 as an advance from time to time. This is not disputed by the workman. Doshi had also produced the file book in respect of another clerk who works with them at Exhibit-15|1 and original white coloured copies of the bill submitted by workman during April, May, 1992 at Exhibit-15|2 and a note book for the entries period from April and May 1992 (Exhibit-15|3). The workman in the cross-examination admits the position. He do not have any proof to show that he had given the account of Rs. 17,000 to the management. It is tried to argue on behalf of the workman that the amount admittedly given to the workman which is eight to nine months is stated by Parekh. It is tried to submit that in that period the vouchers were submitted to the company and now they are raising false claims. Infact while deciding this reference it does not fall in the terms of reference whether Rs. 17,000 were accounted by the workman or not. It also cannot be said to be an incidental issue. The evidence which is lead by the management is only on the ground that the amount of Rs. 17,000 was paid to the workman and he did not account for it. They had also written a letter dated 15-12-95 (Exhibit-8|3) to the Assistant Labour Commissioner wherein they have contended that the worker may be asked to join the duties and he should give the account of that account of Rs. 17,000 within seven days. There are also certain conditions which are enumerated in that letter. That itself goes to show that they are ready to accept the worker in certain conditions. If really the worker would have left the services on his own then there is noth-

ing like putting some conditions to join the duties. The fact that he was asked to join the duties on certain terms and conditions supports the case of the worker that he was terminated. The apology letter dated 30-11-87 (Exhibit-8|5) submitted by the worker does not support the case of the management nor the conciliation proceedings dated 8-1-1996 (Exhibit-8|4).

14. For the reasons stated above the action of the management terminating the services of the workman w.e.f. 18-5-95 is illegal and unjustified. The worker admits that he had an agricultural land at Kolhapur which is of five guntlas. It is a very small piece of land. He does not now that incomes he gets from it. It is therefore it cannot be said that the worker is gainfully employed or in other words was earning something to maintain himself. The result is that he is entitled to all back wages.

15. Mr. Kantharia, the Learned Advocate for the company argued that the word used in the reference is reinstating the workman and not terminating. It can be seen that the termination of the worker was after the office hours of 18-5-95 and he was not allowed to join the duties from 19-5-95. It is therefore argued on behalf of the union that the word used reinstatement in the reference had not at all affected the case of the worker. I find substance in it. For all these reasons I record my finding on the issues accordingly and pass the following order :

ORDER

The action of the management of M/s. Talakchand J. Parekh & Co. in not reinstating the workman Shri Shivaji Vishnu Kamble w.e.f. 19-5-95 with full back wages is not legal and justified. The company is directed to reinstate the workman treating him in continuous service w.e.f. 19-5-95. The Company is directed to pay him full back wages from 19-5-1995.

S. B. PANSE, Presiding Officer

नई दिल्ली, 29 दिसम्बर, 1997

का.आ. 139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत रीफ्रेक्ट्रीज लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गुवाहाटी के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं. एल.-29012/40/95-आईआर (विविध)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 29th December, 1997

S.O. 139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Refractories Ltd., and their workman, which was received by the Central Government on 29-12-1997.

[No. L-29012/40/95-IR (Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI, ASSAM

Reference No. 3(C) of 1995

PRESENT :

Shri J. C. Kalita, B.A. (Hons) LL.B., Presiding Officer, Industrial Tribunal, Guwahati.

In the matter of an industrial dispute :

BETWEEN

The Management of
Bharat Refractories Ltd.,
N.S. Mines, Sonapahar, Boke,

Versus

Their workmen Sri N. P. Sing and 5 others.

APPEARANCE :

Shri S. Sarmah, Advocate—for the Management.

Shri B. N. Sharmah, Advocate—for the workmen.

AWARD

The Government of India, Ministry of Labour, New Delhi, referred an industrial dispute between the management of Bharat Refractories, Ltd., Bokaro Steel City and the Mines Manager, Nongstoin Silliminate Mines, Sonapahar, P.O. Boke, Kamrup, Assam and Shri N. P. Sing and five other workmen C/o Shri Ananda Kumar Sing, Farun Nagar, (ABC), by lane No. 5, Guwahati-5 for adjudication with copies to the parties. On receipt of the notification a reference was registered and notices were sent to the parties to appear and to file their written statement. Both the parties appeared and filed their written statement together with few documents.

The issue reads as follows :—

"Whether the action of the management represented by Chairman-cum-Managing Director, Bharat Refractories Ltd., Bokaro Steel City and the Mines Manager, Nongstoin Silliminate Mines, Sonapahar P.O. Boke, Kamrup, Assam in terminating the services of S/Shri P. V. Suryanarayan, Prabir Singh, N. P. Sing, A. K. Mitra, Shiv Shankar Lal and Manoj Sharma w.e.f. 1-9-93 is justified? If not, what relief the workmen are entitled to and with what relief?"

The workmen in their written statement contended that they were all employed by the Management of Bharat Refractories Ltd. in the Nongstoin Silliminate Mines of Sonapahar with stock yard at Boke. The Company has number of units at different places through out India and it does mining operations and manufacture of refractories. Workman Suryanarayan and Prabir Singh were appointed as Asst. Store Keepers with effect from 2-1-78; Workman N. P. Sing as attendant with effect from 27-5-80; Workman A. K. Mitra as mining mate with effect from 13/14-3-86; Workman Shiv Sankar Lal as mining mat. from 8-11-84; Workman Manoj Sharma as messenger from 10/14-3-90 on condition of their transfer to any branches in India.

It has been stated that the company had sent a notice in Form 'Q' prescribed under the Industrial Dispute Act to the Government of India, Ministry of Labour and Employment, dated 1-3-93 stating that the Company had decided to close down the Nongstoin Silliminate Mines with effect from 1-5-93 on the ground of exhaustion/depletion of minerals expiry of lease deed on 5-12-92. The workmen received no information from the Government of India about the decision of closure or refusal to grant permission to close down the establishment. It is not a case of closure but a shrinkage of business as the Company is operating mines and manufacturing refractories and other associated commercial products in other branches in India except at Nongstoin from 1-9-93. The retrenchment notice terminating their services with effect from 1-9-93 was improper and violative of mandatory requirement of not showing the reasons for retrenchment.

It has been further stated that the employees of the Nongstoin mine could have been transferred and posted in different establishments of the company instead of persuading as many as 35 employees to go on voluntary retirement just on the eve of the alleged closure. These workmen could have been well accommodated in other establishments of the company by means of transfer like that of the employee of Pithoragarh Magnesite Project on its closure. Their retrenchment order is illegal and void.

The Management in their written statement stated that the Bharat Refractories Ltd., is a Government of India undertaking under the Ministry of Steel with its Head Office at Bokaro Steel City having different units at different places in India. After the issue of notice of closure to the Deputy Commissioner, West Khasi Hills, Meghalaya on 1-3-93 all the employees of Nongstoin mines were offered voluntary retirement under the Voluntary Retirement Scheme of the Company. These workmen did not opt for voluntary retirement. As there was no suitable vacancies and there was no operative mines of the company at that time, their services could not be transferred to other units of the company to keep them in service of the Company till the date of superannuation. Their services have been terminated in compliance with the provision of the Industrial Dispute Act and were paid retrenchment compensation along with one month salary in lieu of notice under Section 25-F of Industrial Dispute Act. As no dispute existed on the date of reference the reference is bad in law.

Workmen examined as many as three witnesses and the management examined one witness who were discharged after cross examination. Both sides pressed few documents into service. Heard the arguments of the learned counsels.

The work 'closure' has its place in Section 25-FFF. This work implies the termination of service of all the workmen where the business itself ceases to exist. In the instant reference the business involved is in respect of mining operation in Nongstoin Silliminate Mines in Meghalaya. It is admitted fact that the Bharat Refractories Ltd, Steel City, Bokaro, has number of units at different places in India. For operating mining works the Company engaged more than 100 workmen at Nongstoin mine. The Company itself is not closed down, only a part of its business at Nongstoin was closed down. Prior to this its mining operation at Pithoragarh in M.P. was also closed down. The management in their written statement stated that the company is mining Silliminate from this mines for the purpose of manufacturing refractories.

The witness for the management deposed that the mines at Nongstoin was leased out to Bharat Refractories Ltd. for 20 years. The period of lease elapsed in 1992. The com-

pany approached the Government of Meghalaya for renewal or for a fresh lease but the Government refused to oblige. As a result the works at Nongstoin mines came into stand still position; and the company decided to close down the mining operation at Nongstoin and issued notice to the Secretary, Government of India, Industry Deptt. Ext. 2 is the closure notice dated 1-3-93 Under Section 25-FFA of the Industrial Disputes Act intimating its intention to close down the establishment with effect from 1-5-93. Ext. 1 is the letter addressed to Deputy Commissioner, West Khasi Hills, District, Meghalaya. It has been noted in the conciliation proceeding that the Company has no any other mining works in operation anywhere in India to engage these workmen till the time of superannuation. When the mining operation at Pithoragarh was closed down number of workmen were transferred to Nongstoin, shows the sincerity of the Company not to terminate the services of the workmen. It has been laid down by Hon'ble Supreme Court in a series of decisions that it is not for the Industrial Tribunal to enquire into the motive to find out whether the closure is justified or no. I am satisfied from the evidence on record that the company has fulfilled its statutory obligation by giving closure notice to the Government as provided in Section 25-FFA of the Industrial Disputes Act covering sixty days from 1-3-93 to 1-5-93.

As soon as the closure notice Under Section 25-FFA of the Industrial Disputes Act have been given provision of Section 25-FFF of the Act comes into play. Section 25-FFF imposes a liability to give notice and to pay compensation on the closure of an undertaking which results in termination of employment of the workmen. Though Section 25-F imposes prohibition against retrenchment until the condition provided by that Section are fulfilled; Section 25-FFF (1) imposes no prohibition on termination of employment on closure of undertaking without payment of compensation and without either sending one month notice or paying wages in lieu of notice. Herein this reference witnesses of the workmen deposed that no notice of retrenchment was issued to them. Management witness deposed that Exts. 3 to 8 are the notices of retrenchment sent against these workmen. This has belied the evidence of the workmen.

Section 25-FFF (1) says that on the closure of an undertaking for any reason every workman shall be entitled to notice and compensation in accordance with the provisions of Section 25-F of the Industrial Disputes Act who has been in continuous service for not less than one year in that undertaking immediately before such closure as if the workman has been retrenched. The workmen stated that they have not received the retrenchment notice which is contrary to Exts. 3 to 8, Exts. 3 to 8 are the individual notice of retrenchment and compensation sent to the workmen along with the Bank draft by post stating that their services will no longer be required with effect from 1-9-93. The workmen admitted the receipt of these notices along with the Bank draft and they have encashed the draft. So the plea of non-service of retrenchment found not tenable.

Neither Section 25-F nor Section 25-FFF of the Industrial Disputes Act say that reasonable opportunity be given to the workmen if closure decision is taken. What they are legally entitled under the said Section, it has been complied with.

It has been pleaded by the workmen that it was not a closure but one of business shrinkage. The company is still functioning, only its mining operation at Nongstoin was closed down, and they could have been engaged somewhere else in other units as done when the mining operation at Pithoragarh was closed down. According to management not only one Shri A. K. Mitra, but as many as 11 workmen from Pithoragarh mining were transferred to Nongstoin when the operation at Pithoragarh was closed down. Ext. A is the said order. The witness for the management clearly stated that the closure decision was taken when the lease of the Nongstoin mine was not extended/renewed or any fresh lease was granted. This witness further stated that the Nongstoin mines was the only mining in the whole country in the year 1992; and the engagement of the workmen of Nongstoin mining till their retirement in any other units of the company was not possible but to retrench them because of closure. Introduction of Section 25-FFF in the Act appears to be quite clear that if an employer chooses to close his business there is nothing in the Act prohibiting

him from doing so. But if he chooses to do so arbitrarily and without any reasonable cause then he has to pay compensation to the workmen as if they were retrenched. The company has proved the reasonableness for closure and also paid the retrenchment compensation.

The workmen questioned the validity or legality of the retrenchment notice on the ground that the notices dated 28-8-93 were received by them through post office long after the date of retrenchment on 1-9-93. Ext. Ja(1) to (6) are the retrenchment notices dated 28-8-93 stating that their services will no longer be required with effect from 1993. Can receipt of notice of retrenchment after the date of retrenchment be held to be illegal? Section 25-FFF says that when an undertaking is closed down for any reason whatever, every workman is entitled to notice and compensation in accordance with the provision of Section 25-F of the Act.

Section 25-F says that no workman employed in any industry who has been in continuous service for not less than one year, shall be retrenched by that employer until the workman has been given one month notice in writing indicating the reason for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. It means that instead of sending any such notice the employer may straightway retrench the workman concerned by paying one month's wages in lieu of notice. The notice clearly conveys the date of retrenchment; the amount payable in lieu of one month's notice and the amount of retrenchment compensation. In my opinion, discretion lies with the management either to send one month's notice or to pay one month's pay in lieu of notice. So the plea of the workmen that they have received the notice long after the date of retrenchment has little bearing and no illegality is caused to the workmen.

Though the closure was effected from 1-9-93 and provision of Section 25-F(a) and (b) were fully complied with official records show that the workmen who deposed before this Tribunal as witnesses clearly prove that they worked upto 4-9-1993. Witnesses No. 1 stated that Ext. 'Nivya' is the tour sanction order and Ext. Niya (1) is the signature of Manager, S. Paul and Ext. Niya (2) is his signature. He was on tour from 2-9-93 to 5-9-93. Ext. 'ta', 'tha', 'da', 'dha' are the relevant papers connected with tour.

Workman Prabir Sing worked as Store Keeper cum-Cashier. Verification of cash balance who done on 4-9-93 by the Deputy Manager (1 and A). Ext. Na is the verification and Na (6) is the signature of Prabir Sing and Na (7) is the signature of Manager P. K. Ghose. Witness No. 2 deposed that he attend office on 4-9-93. It was Saturday. When he came to office on 6-9-93, 5th being the Sunday he was not allowed to enter into the office by Meghalaya Police. So from the oral evidences as well as of the documentary evidences it is clear that these workmen worked upto 4-9-93 though they were stated to be retrenched with effect from 1-9-93. When the services are terminated from a certain date on payment of one month's salary in lieu of notice, in such a case the service comes to an end on the date on which it is terminated. The matter would have been different if one month's notice had been given to the workmen concerned. In Workmen of Shillong Hydro Electric Vs. State of Assam AIR 1964, Assam 66, it was held that where the employees were paid one month's salary as well as retrenchment compensation at the rate of 15 days salary for every year of service the defect in notice as regards mentioning of wrong date as the date of retrenchment would not vitiate the notice. Here all the other employees except these six employees accepted the voluntary retirement scheme of the Company. Though their services were terminated with effect from 1-9-93, in fact, they were on duty and attended official work upto 4-9-93, they are entitled to wages and other benefits for these days only; management is to pay their wages upto 4-9-93.

It is an admitted fact that these workmen encashed the drafts sent to them towards retrenchment compensation. Now the question comes whether the workmen have any dispute to raise it again after receipt of their retrenchment compensation. Mr. B. Sharma, the learned counsel for the workmen submitted that the principle of estoppel is not

applicable herein this case. In support of this Mr. Sharma relied on LLJ 1969, Part II, Page 554. In my opinion acceptance of retrenchment compensation by the workmen would not be held to create a bar against them to question the validity of the retrenchment; and the principle of estoppel is not applicable.

Section 2(aaa) defines average pay. It means the average of the wages payable to a workman.

(I) In the case of monthly paid workman, in the three complete calendar months;

(II) In the case of weekly paid workman, in the four complete weeks.

(III) In the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three completed calendar months or four completed weeks or twelve full working days, as the case may be; and where such calculation can not be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

Witness N. P. Sing deposed that he was paid acting allowance. Ext. Jha to his payslip and Ext. Jha (I) is acting allowance shown therein. According to him his acting allowance was not shown in the retrenchment compensation. This fact is not denied by the management by way of cross-examination. As the retrenchment compensation is equivalent to 15 days average pay, and the acting allowance being a part of the pay, his acting allowance needs to be included in the retrenchment compensation and he be paid accordingly.

In the light of the above discussions it is held that the management of Bharat Refractories Ltd., is justified in terminating the services of these six workmen with effect from 6-9-93; but they are entitled to the wages for 4 days with effect from 1-9-93 to 4-9-93 with other benefits. The management is also to pay revised rate of retrenchment compensation to Shri N. P. Sing by including his acting allowance.

I given this award on this 11-8-97 under my hand and seal.

SHRI J. C. KALITA, Presiding Officer

नई दिल्ली 19, दिसम्बर, 1997

का.अ. 140. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक सी आर्डि के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-97 को प्राप्त हुआ था।

[संख्या एल—22012/239/96-आई आर (सी-II)]

लोली माऊ, डेस्क अधिकारी

New Delhi, the 19th December, 1997

S.O.140 :- In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 17-12-97.

[No. L-22012/239/96-IR (CH)]

LOWLI MAO, Desk Officer

ANNEXURE

Before Shri B. K. Srivastava Presiding Officer Central Government Industrial Tribunal-Cum-Labour Court Deoki Palace Road, Pandu Nagar, Kanpur

Industrial Dispute No. 118 of 1997

In the matter of Dispute

BETWEEN Pooran S/o Sarin Singh
Vill. Salempur
P.O. Mohali
Distt. Mathura

AND

District Manager
Food Corporation of India
19/150, Awas Vikas Colony
Agra Road, Aligarh

AWARD

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-22012/239/96-I.R. C-II dated 24-7-97 has referred the following dispute for adjudication to this Tribunal :

Whether the claim of Sh. Pooran to have worked in Food Supply Depot Mathura of Food Corporation of India Aligarh is legal and justified? Whether he has been denied of legitimate claim provided in settlement signed between the management and Food Corporation of India Workers Union New Delhi for introduction of Mate System in FSD, Mathura? If so he is entitled to what relief?

2. It is unnecessary to give the details of the case as after sufficient opportunity the concerned workman has not filed the claim statement. Hence the reference is answered against the workman for want of prosecution and proof and he is not entitled for any relief.

B.L. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 1997

का.अ. 141 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक सी आर्डि के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-97 को प्राप्त हुआ था।

[संख्या एल—22012/244/96-आई आर (सी-II)]

लोली माऊ, डेस्क अधिकारी

New Delhi, the 19th December, 1997

S.O.141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 17-12-97.

[No. L-22012/244/96-IR (C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

Before Shri B. K. Srivastava Presiding Officer Central Government Industrial Tribunal-Cum-Labour Court Deoki Palace Road Pandu Nagar Kanpur Industrial Dispute No. 122/97
In the matter of dispute between :

Islam S/o Ajmeri
Mewati Mohalla
Matiya Gate P.O. Jaggate
Distt. Mathura
AND

District Manager
Food Corporation of India
19/150 Awas Vikas Colony
Agra Road, Aligarh

AWARD

1. Central Government Ministry of Labour New Delhi vide Notification No. L-22012/244/96 I.R.C.-III dated 24-7-97 has referred the following dispute for adjudication to this tribunal :

Whether the claim of Sh. Islam to have worked in Food Supply Depot. Mathura of Food Corporation of India, Aligarh is legal and justified? Whether he has been denied of legitimate claim provided in settlement signed between the management and Food Corporation of India workers Union, New Delhi for introduction of Mate system in FSD, Mathura? If so, he is entitled to what relief?

2. It is unnecessary to give the details of the case as after sufficient opportunity the concerned workman has not filed the claim statement. Hence the reference is answered against the workman for want of prosecution and proof and he is not entitled for any relief.

Date 28-11-97

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 1997

का.आ. 142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार एक सी आई के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-97 को प्राप्त हुआ था।

[संख्या एन-22012/238/96-आई डार (सी-II)]
लोली माऊ, डेस्क अधिकारी,

New Delhi, the 19th December, 1997

S. O. 142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 17-12-97.

[No. L-22012/238/96-IR C-II]
LOWLI MAO, Desk Officer

ANNEXURE

Before Shri B.K. Srivastava Presiding Officer Central Government Industrial Tribunal-Cum-Labour Deoki Palace Road Pandu Nagar Kanpur Industrial Dispute No. 117 of 1997
In the matter of dispute

BETWEEN

Smt. Kashmiri Devi W/o Shri Parsadi
Vill. Zhigurpura
PO Sankat Mochan
Distt. Mathura
AND
District Manager
Food Corporation of India
19/150 Awas Vikas Colony
Agra Road, Aligarh

AWARD

1. Central Government Ministry of Labour New Delhi vide its Notification No. L-22012/238/96-I.R.C.-II dated 24-7-97 has referred the following dispute for adjudication to this Tribunal :

Whether the claim of Smt. Kashmiri Devi to have worked in Food Supply Depot. Mathura of Food Corporation of India Aligarh is legal and justified? Whether she has been denied of legitimate claim provided in settlement signed between the management and Food Corporation of India workers Union, New Delhi for introduction of Mate System in FSD Mathura? If so she is entitled to what relief?

2. It is unnecessary to give the details of the case as after sufficient opportunity the concerned workman has not filed claim statement. Hence the reference is answered against the workman for want of prosecution and proof and she is not entitled for any relief.

Date 28-11-97

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 दिसम्बर, 1997

का.आ. 143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसी सीआई के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गोहाटी के पंचपट को प्रवाहित करती है, जो केन्द्रीय सरकार को 17-12-97 को प्राप्त हुआ था।

[संख्या एल-22012/46/96-आई आर (सी-II)]

नौली माऊ, डेस्क अधिकारी

New Delhi, the 19th December 1997

S.O.143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on the 17-12-97

[No. L-22012/46/96-1 (C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL :
GUWAHATI : ASSAM

REFERENCE NO. 2(C) OF 1997

Present : Shri J.C. Kalita, B.A. (Hons) LL.B.,
Presiding Officer,

Industrial Tribunal, Guwahati.

In the matter of an Industrial dispute between:
The Management of

Food Corporation of India, Guwahati.

Versus

Shri Jibon Bora & 3 others.

AWARD

The Ministry of Labour, Govt. of India, New Delhi by a notification No. L-22012/46/96(C-II) dt. 10-3-97 referred an Industrial dispute between the Management of Food Corporation of India and its workmen Shri Jibon Bora, Jibon Kalita, Mohan Kalita and Rusum Bahadur, for adjudication by

this Tribunal with copies to the parties. On receipt of the notification the reference was registered and notices were sent to the parties to appear and to file written statement. Both the parties appeared and filed their written statement together with few documents.

The issue reads as follows—

“Whether the action of the Sr. Regional Manager, FCI, Guwahati, and Distt. Manager, FCI, Tezpur in not regularising the services of S/Sh. Jibon Bora, Jibon Kalita, Mohan Kalita and Rusum Bahadur w.e.f. their dates of entry service in justified? If not, what relief the concerned workmen are entitled to?”

Management in their written statement contended that these workmen were reinstated under the Management at F.S.D. Bindukuri with back wages as per the award dt. 19-2-90 by this Tribunal against the order of retrenchment passed by the Management. They were working as casual labourers since 1980/81 till they were retrenched from service on 31-12-84. It pleaded their inability to regularise them as there are large number of ancillary workers in the job doing the same nature of job like these four workers. Hence prayed for rejection of their claim.

The workmen in their written statement pleaded that they were working as casual labourers at F.S.D., Bindukuri under Tezpur District Office since 1980/81 but on all sudden they were retrenched from their services with effect from 31-12-84 against which they raised a dispute which was referred by the Central Govt. for adjudication by this Tribunal. This Tribunal vide its award dt. 19-2-90 held their retrenchment as illegal and void and directed the Management to reinstate them with back wages. Accordingly, the Management reinstated them with full back wages.

After joining in their services the workmen submitted a representation for their regularisation in the service in the light of the circular No. EPI(3)91-Vol-II dated 24-8-92 but the management paid no heed to their demands. Hence is the dispute.

Management examined no witness whereas the workmen examined one witness.

Mr. Sarmah the learned counsel for the Management submitted that the question of regularisation in the service of F.C.I. is based on some official procedure subject to the vacancies lying in that category. Unless there are vacancies no casual worker can be regularised. There are hundreds of casual workers like these four workers.

It is an admitted fact that these four workers have been working in F.C.I. since 1980/81 with a break in service continuity on their termination with effect from 30-12-84, but were subsequently reinstated as per the Award passed by this Tribunal. They are now in continuous service of F.C.I. since 1980/81.

Mr. Das, the learned counsel for the workmen solely relied on the circular No. EPI(3)91-Vol-II dt. 24-8-92 and submitted that these workmen were entitled to regularisation as per the contents of the above Circular. The subject matter of the circular relates to appointment of casual/daily rated workers to entry level category III & IV. The Board of Directors have decided to regularise the services of those casual/daily rated workmen who had continuously worked for more than 3 months on the outery date of 2-5-86 and are fulfilling the conditions prescribed in this office confidential letter No. EFI(4)/85 Vol-II dt. 6-5-87; but made it clear that the casual/daily rated employees engaged on or after 2-5-86 will be retrenched summarily by paying their retrenchment compensation. As their continuous service is fully covered by the provision of the circular, they ought to have been straightway regularised but in fact they are not regularised.

It has been submitted on behalf of the management that their cases could not be considered because they were not in service of the corporation for termination of their service with effect from 31-12-84. The circular gave protection to those employees who were on the pay rolls of the corporation as on 1-5-86. These four workmen were not in the service of the corporation on 2-5-86 as their cases have been pending before this Tribunal with effect from 1988 for termination of their services with effect from 31-12-84. The dispute raised against their termination ended with award in favour of the workmen. As per the Award management reinstated them with full back wages in the services of the Corporation from the date of termination. It is now an established fact that they are in continuous service of the corporation since 1980/81 till today.

Submission of Mr. Sarmah has relevancy so long they are not in the service of the Corporation because of termination, but on their reinstatement with continuity of service with back wages their cases ought to have been considered, non-consideration amounts to flagrant violation of the provisions of the circular issued by the Head Office as mentioned above. It is a clear case of discrimination based on unfair principle.

In this connection the management ought to have acted as per the provision of clause 6 of the said Circular. It says that full particulars (with facts and figures) of the cases subjudiced for regularisation of casual/daily rated workers which might still remain unsettled after regularisation permitted as above, must be reported immediately to the joint Manager (IR-Staff) in the F.C.I. Head Quarters for suitable remedial action in consultation with the Head quarters legal Division. When their cases were pending at the time of implementation of the provision of the said circular, their cases ought to have been referred to the Joint Manager (IR-Staff) for consideration for regularisation of their cases with the information that their cases are well covered by the provisions of the circular. Instead of implementing the provisions of the circular these poor casual workers were forced to seek redress in the Tribunal. In support of his case Mr. Das relied on (1988) 1 SCC 122. The workmen involved in this cited case were daily rated worker of P&T Department who were doing the work similar to that of regular workers, and have been continuously working for more than one year, were allowed to be absorbed as regular employees. The facts of this case is similar to that of the cited case. So, I find this decision acceptable herein this case. These workers have been servicing in the corporation since 1980/81 without being regularised though some of their colleagues have been already regularised as per the provision of the said circular.

Though the management of F.C.I. are duty bound to act fairly as per the provision of the said circular, management's inaction to regularise them have been found not justified. Accordingly, the management is hereby directed to take steps to regularise these four casual workers into the service of the F.C.I.

I given this Award on this 25th November, 1997 under my hand seal.

SHRI J.C. KALITA, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 1997

का०आ० 144.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार म० सी० सी० एल० के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं० 2), धनबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/12/97 को प्राप्त हुआ था।

[सं० एल-20012/19/91आई० आर० (सी-1)]
सनातन, डैस्क अधिकारी

New Delhi, the 18th December, 1997

ANNEXURE

S.O. 144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C.C.L. and their workman, which was received by the Central Government on 17-12-1997.

(No. L-20012/19/91-IR (C-I))
SANATAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 22 OF 1993.

PARTIES :

Employers in relation to the management of Kedla Colliery of M/s. Central Coalfields Ltd. and their workman.

APPEARANCES :

On behalf of the Workmen : None.

On behalf of the Employers : Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbad, the 11th December, 1997

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/19/91-I. R. (Coal-I), dated, the 17th March, 1993.

SCHEDULE

"Whether the action of the Management of Kedla Project of C.C. Ltd., P.O. Kedla, District Hazaribagh in dismissing from services (1) Shri Jahur Alia Mian, (2) Lal Kumar Choudhary, (3) Banu Munda, (4) Saikhu Ram and (5) Fulputiya Bhuiya and not making payment of their dues is legal and justified? If not, to what relief these workmen are entitled?"

2. In this reference both the parties appeared and filed their respective W.S. Subsequently when the case was fixed a Memorandum of settlement was filed before this Tribunal under signature of both the parties. Perused the settlement and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the said settlement and do pass an Award in terms thereof which forms part of the Award as Annexure.

B. B. CHATTERJEE, Presiding Officer.

MEMORANDUM OF SETTLEMENT IN FORM 'H' UNDER RULE 58 OF THE INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957 READ WITH SECTION 12(3) OF THE I. D. ACT, 1947 IN THE MATTER OF DEMAND FOR RE-INSTATEMENT OF SHRI JOHAR ALI AND FOUR OTHERS OF KEDLA NORTH COLLIERY

NAME OF THE PARTIES :

REPRESENTING MANAGEMENT :

1. Shri B. B. Singh, General Manager (P-IR & W.), CCL, Ranchi.

REPRESENTING WORKMEN:

1. Smt. Ramn'ka Gupta, General Secretary, CLU (ITU).
2. Shri Johar Ali.

SHORT RECITAL OF THE CASE

S/Shri Johar Ali, CMPF No. R/44-2734, Lal Kumar Choudhary, R/44-2349, Banu Munda, R/44-2196, Sheikh Ram, R/44-2507 and Fulputiya Bhuiya, R/44-2877 were discontinued from the services of the C.C. Ltd. from 1980 on the ground of impersonation. For quite some time the demand of concerned workmen/Union for re-instatement of the concerned workman in service of the Company was under negotiation to resolve the issue once for all. The matter is also pending in C.G.I.T. No. 2, Dhanbad having Ref. No. 22/93. On 6th of August, 1997, the matter was finally negotiated and decided to come to an amicable and mutually acceptable settlement on the following terms and conditions.

1. It is agreed that the above named workmen shall be re-instated in service with continuity of service, subject to their medical fitness for the job.
2. It is agreed that the workmen concerned shall be given Rs. 7000/- (Rupees seven thousand only) each as lump-sum amount.
3. It is agreed that the above settlement shall be given effect within 15 (fifteen) days from the date of the consent Award of Hon'ble Tribunal.
4. It is agreed that this is an overall and full and final settlement of the claims of the workmen/union concerned arising out of Ref. No. 22/93 pending at C.G.I.T. No. 2, Dhanbad.

That both the parties hereby declare and confirm that they consider the above terms of settlement as fair, just and reasonable to both the parties.

Sd./- Illegible.

1. (Smt. Ramn'ka Gupta) General Secretary, CLU (CITU).

Sd/- Illegible

(B. B. Singh)
General Manager (Personnel)
C.C.I. Ranchi.

2. (Johar Ali).
Sd./- Illegible.
3. L.T.I.
Sd./- Illegible.
4. L.T.I.

Witnesses :

1.
Sd./- Illegible.
2.
Sd./- Illegible.

Part of the Award.

B. B. SINGH, General Manager (P-IR & W)
C.C.L. Ranchi.

नई दिल्ली, 18 दिसम्बर, 1997

कां०आ० 145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै० बी० सी० सी० एल० के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं० 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/12/97 को प्राप्त हुआ था ।

[सं० एल-20012/120/92-आई०आर० (सी-I)]
सनातन, डेस्क अधिकारी

New Delhi, the 18th December, 1997

S.O. 145.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL. and their workman, which was received by the Central Government on 17-12-1997.

[No. L-20012/120/92-IR (C-I)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD.

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947
REFERENCE NO. 31 OF 1993.

PARTIES :

Employers in relation to the management of
Bhagaband Colliery of M/s. B.C.C.L. and
their workmen.

APPEARANCES :

On behalf of the Workmen : None.

On behalf of the Employers : None.

STATE . Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 28th November, 1997.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(120)/92-I.R (Coal-I), dated, the 15th April, 1993.

SCHEDULE

"Whether the action of the management of Bhagaband Colliery in not treating the age of Shri Bideshi Bhuiya underground trammer as 31 years on 16-10-1971 is justified ? If not, to what relief the workman is entitled for ?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. The parties neither appeared nor took any steps. Then again notices were issued to them. But in spite of the issuance of notices to them they neither turned up nor took any steps. It therefore leads me to an inference that there is no dispute presently existing between the parties and in the circumstances I have no other alternative but to pass a 'No dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer.

नई दिल्ली, 18 दिसम्बर, 1997

कां०आ० 146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/12/97 को प्राप्त हुआ था ।

[सं० एल-12011/38/93-आई०आर० (बी०-II)]
सनातन, डेस्क अधिकारी

New Delhi, the 18th December, 1997

S.O. 146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 17-12-97.

[No. L-12011/38/93-IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 83/94

In the matter of dispute between :

General Secretary,
Punjab National Bank Employees Union,
710, Ballimaran, Chandni Chowk, Delhi-6.

Versus

Punjab National Bank,
Personnel Division,
Head Office, Bhikha Ji Cama Place,
New Delhi.

APPEARANCES :

Shri K. R. Nagpal—for the Union.

Mrs. Rashmi Khanna—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/38/93-LR. B-2 dated 26-7-1994 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Punjab National Bank, New Delhi in not granting special allowance to Data Entry Operators @ Rs. 282 p.m. w.e.f. 1-11-1987 is justified. If not, what relief are the Data Enquiry Operators entitled to?"

2. It is claimed by the Union that the management bank and the representing union had entered into a settlement on 25-8-1987 which envisages payment of special allowance of Rs. 282 P.M. to Key Punch Operators for the period 1-6-83 to 31-8-87 against Rs. 140 per month being paid at present that time and from 1-9-87 the K.P.Os. could be paid special allowance of Rs. 245 P.M. at the output of 8000 KLP.H. The settlement further provides for re-designation of such KPOs posted at the Agency Department and CPPD of the management bank as Data Entry Operators. Since the Settlement also provides that any revision at the industry level in the special allowance of Rs. 245 P.M. being paid under the provisions of the IVth Bipartite Settlement shall be applicable to the DEOs with effect from the date of revision. Now since at industry level the special allowance of Rs. 245 p.m. has been revised to Rs. 282 p.m. by way of amendment introduced by Vth Bipartite Settlement, the management has not implemented the provisions of the Settlement dated 25-8-87. The bank has taken no notice of the communications put forth by the representing union. Besides, the Union representative has also referred to bank level settlement dated 10-3-89 in its claim paras 7 and 8. The representative for the union has further stated in the rejoinder that DEOs were getting allowance of Rs. 140 and IBM/ICT Operators were getting Rs. 245 in terms of settlement dated 17-9-84 in operation when settlement dated 25-8-87 was signed. In the latter settlement it was agreed that DEOs in Delhi will get allowance of Rs. 245 from 1-9-87 whereby these workmen were treated as a separate class.

3. The management in its written statement repudiated the grounds taken in the statement of claim.

It is an admitted position that the provisions as stated by the union with respect to settlement dated 25-8-87 exist and there are revisions in certain special allowance in the industry level settlement also. It is a matter of interpretation of the understanding dated 25-8-87. The union is interpreting these provisions in isolation, in fact if the provisions of the said settlement dated 25-8-87 are seen alongwith the provisions of the industrywise settlement, v.z. IVth and Vth Bipartite Settlement, the conclusion which is arrived at is entirely different. The understanding of 25-8-87 pertain to the DEOs solely whereas the special allowance of Rs. 245 contained in the IVth Bipartite Settlement relate to IBM/ICT Operators. The duties of DEOs are entirely different from that of IBM/ICT Operators. Moreover the industrywise

settlement provides for special allowance of Rs. 161 PM payable to the DEOs and DEOs in Delhi were already getting allowance of Rs. 245 and as such the claim of the union is not justified. The management has also put forth an objection that the union could have taken up the matter at the corporate level of the bank in view of the specific provisions of the understanding dated 25-8-87 that in case of difficulty/doubt/interpretation/implementation of the provisions the same shall be discussed between the Head Office and the representing union. The union has knocked the doors of law without exhausting the alternate remedy available to them and as such the dispute by the union is not maintainable being premature. Further, management has rebutted that settlement dated 10-3-89 is not relevant to the present terms of reference.

4. Both the parties have relied upon the settlement dated 25-8-87 marked as 'Annexure I' and settlement dated 10-3-89 marked as 'Annexure-II' and the provisions of settlement dated 10-4-89 are quoted in the written submissions which are relevant in the matter. None of the parties have examined any witness but stated that since the matter relates to interpretation of provisions of the settlement, witnesses are not required.

5. I have heard the representatives for both the parties and have gone through the record.

6. The representative of the management reiterated all that was alleged in the written statement and has mainly pointed out that the settlement dated 25-8-87 is to be interpreted in totality considering all the provisions contained therein. Moreover, management's representative stressed that there can be on comparison between the job profile of DEOs and that of IBM/ICT Operators, had it been so in Bipartite Settlement different allowances would not have been provided for. DEOs were allowed allowance of Rs. 245 p.m. in terms of settlement dated 25-8-87 keeping in view the job profile of output of 8000 KDPH on the machine. At the same time, job profile of the IBM/ICT Operators which is given in the industrywise settlement is different and attracted special allowance of Rs. 245 at that time. Management further pointed out that union representative has admitted that DEOs in Delhi are a separate class than those referred in Bipartite Settlement. It has been specifically argued further by the management that if at all the interpretation of the union is accepted it would create a disparity at the industry level and there are all possibilities that DEOs will be taken in the class of IBM/ICT Operators and if at all there is any elevation in the allowance of DEOs at industry level, the IBM/ICT Operators may raise a demand for payment of enhanced allowance or vice versa placing reliance on the outcome of the instant dispute. As such, the situation is not favourable in the interest of the industrial relations scenario of the bank.

On the other side the union representative argued that though no designation of DEOs is referred against allowance of Rs. 245 but having regard to the special circumstances in Delhi, higher allowance was agreed to be paid to the DEOs posted at Delhi and since the Settlement specifically provide that if there is any change in the allowance of Rs. 245 at industry level the same would be made available to the DEOs posted in Delhi as well.

7. After perusal of the points argued by the representatives for the parties, I am of the opinion that the Union has a case at the outset in the claim of the union it is stated that designation of DEOs was not in existence as against the allowance of Rs. 245 in the Bipartite Settlement in operation at that time. But the higher allowance was agreed keeping in view the special circumstances in Delhi. I find that nothing has been placed on record to point out as to what were the special circumstances by either party that higher allowance at that time was made available to DEOs. I feel convinced with clause 6 of Settlement dated 25-8-87 agreeing for payment of Rs. 245 read with clause 12 relating to payment of higher allowance was agreed at that point of time as at that particular point it was viewed that if at all there is any increase in the allowance of Rs. 245 at industry level same would also become available to Delhi DEOs. There is only a reference of allowance of Rs. 245 and there is no mention of any designation in clause 12. The argument of management that the settlement is to be interpreted in totality has no force in view of submission

of the union that DEOs designation is not referred against the special allowance of Rs. 245 which got increased to Rs. 282 later w.e.f. 1-11-87. But I am strongly convinced with the clause 12 that increase in figure of Rs. 245 will be available to DEOs in Delhi. Since in V Bipartite Settlements Rs. 245 was increased to Rs. 282 to DEOs w.e.f. 1-11-87 working in its Delhi Offices who are covered by Settlement of 25-8-87. Terms of reference are answered accordingly. Parties are left to bear their own costs.

15th December, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

कां.ग्रा. 147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में इंडस्ट्रियल गाइड्स सर्विस प्रा. लि. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं-2), मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एल-20040/84/94-ग्राई. ग्रा. (सी-I)]

मनातन, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 147.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, (No.-2), Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Industrial Guards Service Pvt. Ltd. and their workman, which was received by the Central Government on 22-12-97.

[No. L-20040/84/94-IR(C-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/33 of 1995

Employers in relation to the Management of M/s. Industrial Guards Service (P) Ltd.

AND

Their Workmen

APPEARANCE :

For the Employer No. 1.—Mr. Haresh Motwani Advocate.

No. 2.—Mr. G. D. Talreja, Advocate.

For the Workmen.—Mr. S. R. Wagh, Advocate.

Mumbai, dated 4th December, 1997

AWARD

(The Government of India, Ministry of Labour by its Order No. L-20040/84/94-IR(Col-D) dated 30-11-91, had referred to the following Industrial Dispute for adjudication)

"Whether the action of the management of M/s. Industrial Guards Services Pvt. Ltd. Contractor of ONGC in not accepting the charter of demands served by the union is justified or not? What relief should be granted?"

2. The transport and dock workers union, Bombay filed a statement of claim at Exhibit-1. It is averred that the Oil and Natural Gas Commission Ltd. (ONGC Ltd.) conduct his business of exploring and extracting oil from sea bed in the vicinity of Mumbai Raigad, Thane District and other places. It employs other contractors to perform different jobs to work while conducting its business. It engaged M/s. Industrial Guard Services P. Ltd. as one of the contractors for providing, Watch and Ward services. The workmen do the job as security persons.

3. The union pleaded that the contractor is registered under the provisions of Contract Labour (Regulation and Abolition Act of 1970) and ONGC Ltd. is registered as a principal employer under the same Act. It is submitted that the service conditions of the workmen employed by the contractor are very poor unsatisfactory and the wages paid are very low. The union therefore served a Charter of Demands on the contractor and ONGC Ltd. to which they did not pay any attention. It is therefore the union by its letter dated 14-7-93 send the demand to the Assistant Labour Commissioner, Mumbai with copies to the contractors and ONGC requesting him to admit the Charter of demands for conciliation. But the matter could not be conciliated.

4. The union by the Charter of Demand dated 14-7-93 had specifically demanded (1) Wages (2) Leave (3) Provident Fund (5) General-Monsoon and safety gears, uniforms, working hours, overtime injury compensation, identity card and Bonus.

5. The ONGC entered into two Memorandum of Understandings (MOU's) with the union in conciliation proceedings before the Regional Labour Commissioner on 15-1-93 12-7-93 by which the wages of all contract workers were revised and recognised. All contractors are bound by those Memorandum of Understandings. Thus the demand of wage revision was made with but other service conditions as demanded by the union were not met with. The union pleaded that the demands for other service conditions are most logical, legal and rational. It is averred that they may be granted with retrospective effect.

6. The ONGC resisted the claim by the written statement (Exhibit-8). It is averred that it is not the employer of the workman on whose part the Charter of demands dated 14-7-93 purported to have been raised by the union within the meaning of Section 2(G) of the Industrial Disputes Act of 1947. It is averred that the Industrial Disputes Act does not recognise Tripartite relationship of principal employer the contractor and the worker engaged by the contractor. Hence the reference is not maintainable. It is asserted that the demands were never served on the ONGC as alleged. It is therefore the reference is not maintainable.

7. The ONGC pleaded that it provided job contractor for providing receptionist for regulating ingress and egress of man and material and opening and closing of office, rooms including all other jobs related to these functions at the office of ONGC at various places in Mumbai to M/s. Industrial Guards Services (P) Ltd. for the period 1-9-91 to 31-9-92 which was extended from time to time till 31-8-94. The ONGC asserted that it is not the proper and necessary party in the present reference. It is averred that it is required to engage contractors as permissible under the Provisions of the Contract Labour (Regulations and Abolitions Act, 1970). M/s. Industrial Guards Services (P) Ltd is an independent contract when it has not work force under their control supervisions and discipline. It is averred that the contractor is required to comply with all labour laws and ONGC is not responsible or liable for any violation of the Labour laws alleged to have been made by the contractor.

8. The ONGC averred that as per the information made available the contractor paid wages of their workmen which were not less than the minimum rate of wages fixed of the State Government or the Central Government under the provisions of the Minimum Wages Act of 1948. The contractor also extended bonus, FSI, Provident Fund and Leave benefits to the worker. He also issued two sets of uniforms and Identity cards to all the other workmen. It is submitted that as per the Memorandum of Understanding the contractor is liable to pay wages and other benefits to the workman

as provided therein and not the principal employer. It is submitted that under such circumstances no relief can be granted against the ONGC.

9. M/s. Industrial Guards Services (P) Ltd. filed written statement at Exhibit-9. It is asserted that ONGC gave a contract to it for providing receptionist for regulating ingress and egress to man and material and opening and closing of office rooms including all other jobs related to these functions at the office of ONGC, at various places. It is submitted that the union does not possess a representative character and status to raise demands on behalf of the workman employed by the contractor. It is therefore the dispute is not maintainable. It is submitted that the contract which was given to the contractor will come to an end on 31st August, 1994 and therefore no relief can be granted against the contractor. It is denied that the service conditions of the employees engaged by the contractor are not proper. It is asserted that the Industrial Disputes Act does not recognise Tripartite relationship of principal employer. The contractor and the workman engaged by the contractor. Hence the reference is not tenable. It is submitted that the contractor is not a party to the Memorandum of Understanding. It is therefore he is not liable to extend the wages and service conditions as provided therein to their workmen. It is averred that the service conditions and facilities which are required to be given under the law are given to the workman. It is averred that the job contract came to an end on 31-8-93. It is averred that no demands were raised and submitted by the union on the contractor before raising an Industrial Dispute under the provisions of the Industrial Disputes Act of 1947. As such the reference is not tenable.

10. The union pleaded that the contractor had granted 21 days leave benefit from ESI and Provident Fund benefits under the relevant laws, four paid holidays, two sets of terecotton uniform and woollen trouser, rain coats-cum-water proof shoes, bonus to the concerned workmen which were quiet fair and reasonable. Under such circumstances the demand raised by the unions in its purported charter of demands dated 14-7-93 are in conceived and misconceived and not tenable in law. It is averred that the demands which are already covered under the Labour laws which are made in the Charter of demands are not legal and proper and tenable. It is submitted that under such circumstances the union is not entitled to any of the reliefs as claimed.

11. The issues that fall for my consideration and my findings thereon are as follows:

Issues	Findings
1. Whether the reference is maintainable ?	Yes.
2. Whether the action of the management of M/s. Industrial Guards and Services (P) Ltd. contractor of ONGC in not accepting a Charter of demand served by the union is justified or not ?	Yes.
3. What relief should be granted ?	Does not survive.

REASONS

12. M/s. Industrial Guards Services (P) Ltd. is the employer of the workman and a contractor of ONGC the principal employer in relation to the workman concerned. Industrial Guard Services controls the work and discipline then. It is not in dispute that the Memorandum of Understanding arrived at between ONGC's and different unions are required to be followed by the contractors and pay wages and extend benefits as provided therein.

13. It is argued on behalf of the contractor and ONGC that no Charter of demand was over served on them by the workman before he approached the Assistant Labour Commissioner. Hence the reference is not maintainable. No doubt there is no record to that effect nor the workman Buddhiram Yadav affirmed to that effect. But, they had raised the dispute before the Assistant Labour Commissioner to put it for conciliation. The parties appeared before the

Assistant Labour Commissioner. That itself goes to show that they were aware of the demand of the workman and as such it cannot be said that they were not informed regarding it.

14. In normal course when such demands are made the concerned persons are always informed. There was no reason for the union not informing the contractor and ONGC regarding their Charter of demand. It is contended that the demands were made to the contractor and ONGC but they did not pay any attention. Hence they approached the Assistant Labour Commissioner by their letter dated 13-7-93 and its copies were sent to the contractor and ONGC. The parties appeared before the Assistant Labour Commissioner. Under such circumstances I do not find any reason to disbelieve the union that they did approach, the contractor and ONGC the principal employer with their charter of demands. It is common knowledge that when a matter can be settled outside the court nowadays it is the tendency to get it done there and there only to avoid expenditure and the time in the court proceedings. It is tried to argue on behalf of the ONGC and the contractor that as the demand was not served on them the reference is not maintainable. For the reasons stated above I do not find any merit in it.

15. The Charter of demand is for different demands. They are enumerated in paragraph-7 of the Statement of Claim. Buddhiram Yadav (Exhibit-15) does not refer to wages. He claimed that he is paid Rs. 1000 per month as the salary and stated that they are not paid as per the Memorandum of Understanding signed between the Transport and Dock Workers Union and the principal employer M/s. ONGC. In fact in the Statement of Claim in paragraph-8 it is categorically mentioned that in a conciliation proceeding before the Regional Labour Commissioner, Mumbai dated 15-1-93 and 12-7-95 by which the wages of Contract workers were revised and regularised. It is further mentioned that the demand of wage revision was made with it but other service conditions as demanded by the union were not made with. In other words there is no dispute in existence so far as wages are concerned. They are governed by Memorandum of Understandings. It can be seen that the Charter of demand was dated 13-7-93 on which date Memorandum of Understanding dated 15-1-92 (Exhibit-9/1) was in existence and not the later Memorandum of Understanding dated 12-7-95. After perusal of the Memorandum of Understanding dated 15-1-92 it is very clear that the employees are entitled to the wages as stated therein. It is common knowledge that when a contract is given to the contractor the MOU's are the part and parcels of terms and conditions. I therefore find that the workmen are entitled to wages as mentioned in the Memorandum of Understanding.

16. It is tried to argue on behalf of the contractor that his initial position has to be seen when the wages are to be fixed. I am not fixing the wages at all. The fixation of wages is carried out in Memorandum of Understanding for which the unions and the ONGC are the parties and the contractor when accepting the contract accepts the terms and conditions of the Memorandum of Understanding. It is therefore not necessary for the Tribunal to look into the financial conditions of the contractor which is argued if he is not financially sound he should not accept the contract on that basis. I therefore need not consider that portion of the argument and the evidence lead to that effect.

17. So far as the other claim of the union in respect of Leave, Provident Fund and generally they are not covered under the Contract Labour (Regulation and Abolition Act, 1970). The Memorandum of Understanding provides for retention of those benefits which the employees are already enjoying. Here the testimony of Buddhiram (Exhibit-15) is relevant. He accepts the position that in ONGC there is no category of a messenger. There are no employees in ONGC doing the same type of work which carried out by these employees. In other words the service conditions of these workmen cannot be compared with the service conditions of other employees of ONGC. He will be entitled to get the benefits as per the terms and agreements with the contractor. It can be further seen that for comparing purpose there is nothing on the record to show that the contractor is not giving them the normal benefits which should

be given. Yadav (Ex-15) affirms that he gets 21 casual leaves but other workers get thirty days earned leaves. They are claiming that benefit. He further stated that the ONGC employees gets 12 days casual leaves and their service conditions are settled on the basis of the settlement between management and the concerned workers and union. It is not in dispute that their work is supervised by the supervisors of the Industrial Guards services and not by ONGC's. Naturally these employees are entitled to get the benefits as per the terms and conditions with the contractor.

18. Ravindra Singh (Exhibit-18) affirmed that M/s. Industrial Guards services Private Limited is one of the 29 contractors exempted by the Government of Maharashtra under section 23 of the Maharashtra Security Guards (Regulation of Employment Welfare Act) 1981. He affirmed that these employees are given four paid up holidays which appears to be correct from the wagesheet which is produced on the record. They are given uniforms every year and from 1995 onwards they are given two pairs of uniforms one pair before 26th January and 2nd pair before 15th August. They are provided with Privileged Leave. He deposed the wages and service conditions of the regular workmen engaged by M/s Industrial Guards Services (P) Ltd. provided at various establishments who have awarded a job contract of a security work are on different basis. But so far as the employees engaged at ONGC the Receptionist is given wages : Rs. 2375.00 + variable Dearness Allowance.

2. Supervisor :

Wages : Rs. 2475.00 + Variable Dearness Allowance.

3. Service conditions :

- (i) Earned Leave 21 days.
- (ii) Paid Holidays 4 days.
- (iii) E.S.I. benefits in accordance with ESI Act.
- (iv) P.F. benefits in accordance with P.F. Act.
- (v) Gratuity as per Gratuity Act 1972.
- (vi) Bonus accordance with payment of Bonus Act.

19. Ravindra Singh further affirmed that these employees are paid bonus every year as per the provisions of the payment of Bonus Act. It can be seen that so far as the rights under the statutes are concerned nothing can be done in this reference. Looking to the testimony of Ravindra Singh nothing has come on the record to show that what is provided to these workmen is unjust. He affirmed that the wages are paid on the basis of the Memorandum of Understandings. But, according to him they are governed by the Board. Looking to his testimony I do not find any reasons to doubt anything whatever stated by him.

20. It is argued on behalf of the ONGC that the demand which is made by the union is against the contractor and having nothing to do with it. No award can be passed against them. I am fully in agreement with it. They appear to be a formal party. The relief given in the contract Labour (Regulation and Abolition Act, 1970) can be made applicable with the contractor when the contract fails to make payment of wages. In that case the registered employment namely the ONGC comes to the picture. For all these reasons I record my findings on the issues accordingly and pass the following order :

ORDER

The action of the management of M/s. Industrial Guards Services Pvt. Ltd. Contractor of ONGC is not accented the Charter of Demands served by the union is justified.

S. B. PANSE, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

कां.प्र. 148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्जन में, केन्द्रीय सरकार में औद्योगिक विवादों के प्रबंधन के सुव्यवस्थित नियमों, जहाँ और उनके कर्मचारियों के बीच, अनुसर्जन में निर्दिष्ट औद्योगिक-

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं-2,) को प्रकाशित करती है, जो केन्द्रीय सरकार मम्बई के पत्र.ट. 22/12/97 को प्राप्त हुआ था।

[सं. एल-20040/78/94-आई. आर. (सी-I)]

सनातन, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Mumbai as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of M/s. O. N. G. C. and their workman, which was received by the Central Government on 22-12-1997.

[No. L-20040/78/94-IR(C-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II

MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer

REFERENCE NO. CGIT-2/38 OF 1995.
EMPLOYERS IN RELATION TO THE
MANAGEMENT OF O.N.G.C.

AND

THEIR WORKMEN

APPEARANCES :

For the Employer : Mr. G. D. Talreja,
Advocate.

For the Workmen : Mr. S. R. Wagh,
Advocate.

Mumbai, dated the 4th December, 1997

AWARD

The Government of India, Ministry of Labour by its Order No. L-20040/78/94-IR (Coal-I) dated 13th December, 1995 had referred to the following Industrial Dispute for adjudication.

"Whether the action of the management of M/s. Sagar Enterprises a contractor of ONGC, in denying to accede to the charter of demands raised by the Transport and Dock workers union vide its letter dated 12th July, 1993 is legal and justified? If not what relief the workman are entitled to?"

2. The transport and Dock workers union Bombay filed a statement of claim at Exhibit-4. It is contended that the Oil and Natural Gas Commission Ltd. (ONGC) conducts its business of exploring and extracting oil from the sea bed in the vicinity of Mumbai, Raigad and Thane districts and other places. It employed other contractors to perform different types of work while conducting its business. M/s. Sagar Enterprises is one of such contractors. The contractor is of Fire services. The contractor is registered under the provisions of contract labour (Regulation and Abolition Act, 1970) and ONGC Ltd. is registered principal employer under the same Act. It is averred that the service conditions of the workmen employed by the contractor are very poor and unsatisfactory. They are paid low wages, not given leave, holidays and other amenities given to the employees of others.

3. The union pleaded that to improve the service condition of the workman it served charter of demands on the contractor and ONGC Limited to which none of them complied. The remained silent spectator. It is therefore, on 12th July 1993, the union addressed a letter to Assistant Labour Commissioner and its copies were sent to the contractor and ONGC Ltd. requesting him to admit Charter of demand in conciliation. But none could take place.

4. The union averred that specific demands as such Charter of demands dated 13-3-1993 are (1) wages (2) Leave (3) Provident Fund (4) General Monsoon gears safety gears, uniform, working hours, overtime, injury compensation, identity cards, bonus, working strength vacancy. It is submitted that the principal employer and the unions signed Memorandum of Understanding dated 15th January, 1993 to 12-7-1995 by which the wages of all contract workers were revised and regularised. Those MOUs are binding to the existing contractors and new contractors. Thus the demand of wage revision was met

with but other service conditions as demanded by the union were not met with. It is asserted that the unions demand for leave, Provident Fund, monsoon gears and other things are just legal and proper. It is prayed that it may be granted retrospectively.

5. The ONGC resisted the claim by the written statement (Exhibit-6). It is averred that ONGC is not the employer of the workman on whose behalf the Charter of demand dated 12-7-93 has been raised by the union within the meaning of section 2(G) of the Industrial Disputes Act of 1947. It is submitted that the Industrial Disputes Act does not recognise Tripartite relationship. Under such circumstances the reference which is made against the ONGC is not maintainable. It is asserted that the Tribunal has no jurisdiction to entertain and try the reference. It is pleaded that ONGC is not at all concerned with the demands raised by the union. It is averred that ONGC is not proper or necessary party to this reference.

6. The ONGC pleaded that the contractor is required to comply with all labour laws and it is not responsible and liable for any violation of Labour Laws alleged to have been made by the contractor. It is submitted that the contractor engaged 15 workmen to execute the said job contract which came to an end on 31-7-1994.

7. It is pleaded that as per the information made available to it the contractor paid wages to the workman which were not less than the minimum rate of wages fixed by the State Government or Central Government under the provisions of Minimum Wages Act of 1948. The Contractor also extended bonus, FSI, Provident Funds, and leave benefits to their workman. He also issued two sets of uniforms and identity cards to all workmen. It is averred that in view of the MOU the contractor is made liable to pay wages and other benefits to their workmen as provided there in and not the ONGC. It is submitted that no relief can be granted to the union against the ONGC.

8. The union filed a rejoinder at Exhibit-9, and reiterated its contention taken in the statement of claim.

9. Even though Sagar Enterprises the contractor was duly served he remained absent. The matter is heard ex-parte against him.

10. The issues that fall for my consideration and my findings there on are as follows :

Issues	Findings
1. Whether the reference is maintainable?	Yes
2. Whether the action of the management of M/s. Sagar Enterprises, the contractor of ONGC, raised by the Transport and Dock workers by this letter dated 12-7-93 is legal and justified?	Yes
3. If not, what relief the workmen are entitled to?	Does not survive

REASONS

11. M/s. Sagar service agency is the employer of the workman and a contractor of ONGC the principal employer in relation to the workman concerned. Sagar Enterprises controls the work and discipline then. It is no to dispute that the Memorandum of Understanding arrived at between ONGC's and different unions are required to be followed by the contractors and pay wages and extend benefits as provided therein. There is no category of a messenger in the employment of ONGC.

12. It is tried to argue on behalf of the contractor and ONGC that no charter of demand was ever served on them by the workman before he approached the Assistant Labour Commissioner. Hence the reference is not maintainable. No doubt there is no record to that effect nor the workman Arun Madhukar Mohite (Ex-11) affirmed to that effect. But, they had raised the dispute before the Assistant Labour Commissioner to put it for conciliation. The parties appeared before the Assistant Labour Commissioner. That itself goes to show that they were aware of the demand of the workman and as such it cannot be said that they were not informed regarding it.

13. In normal course when such demands are made the concerned persons are always informed. There was no reason for the union not informing the contractor and ONGC regarding their Charter of demand. It is contended that the demands were made to the contractor and ONGC but they did not pay any attention. Hence they approached the Assistant Labour Commissioner by their letter

dated 13-7-1993 and its copies were sent to the contractor and ONGC. The parties appeared before the Assistant Labour Commissioner. Under such circumstances I do not find any reason to disbelieve the union that they did approach. The contractor and ONGC the principal employer with their Charter of demands. It is common knowledge that when a matter can be settled outside the court nowadays it is the tendency to get it done then and there only to avoid expenditure and the time in the court proceedings. It is tried to argue on behalf of the ONGC and the contractor that as the demand was not served on them the reference is not maintainable. For the reasons stated above I do not find any merit in it.

14. So far as the other claim of the union in respect of leave, provident fund and general they are not covered under the Contract Labour (Regulation and Abolition Act, 1970). The Memorandum of Understanding provides for retention of those benefits which the employees are already enjoying. Here the testimony of Arun Madhukar Mohite (Ex-11) is relevant. He accepts the position that in ONGC there is no category of a messenger. There are not employees in ONGC doing the same type of work which is carried out by these employees. In other words the service conditions of these workmen cannot be compared with the service conditions of other employees of ONGC. He will be entitled to get the benefits as per the terms and agreements with the contractor. It can be further seen that for comparing purpose there is nothing on the record to show that the contract is not giving them the normal benefits which should be given. Arun deposed that they get 216 days Privileged leave but the employees in the ONGC get 30 days P. L., they do not get casual leave but the ONGC employees get 14 days casual leaves. He had also innumeraled the other service conditions which the ONGC employees are getting. It cannot be forgotten that these employees are the employees of the contractor. It is to be seen whether the reliefs which are given to them are as per different Acts or not. It can be further seen that the reliefs they are getting which are deposited by Arun cannot be said to be much less as claimed by the union in the Statement of claim. The demand of Provident Fund, overtime are provided by the statutes. No order can be passed to that regard. They are provid-

ed with uniforms but their demand for more set of uniform appears to be unjust.

15. It is argued on behalf of the ONGC that the demand which is made by the union is against the contractor and having nothing to do with it. No award can be passed against them. I am fully in agreement with it. They appear to be a formal party. The relief given in the contract Labour (Regulation and Abolition Act, 1970) can be made applicable with the contractor when the contractor fails to make payment of wages. In that case the registered employer viz. the ONGC comes to the picture. For all these reasons I record my findings on the issues accordingly and pass the following order :—

ORDER

The action of the Management of M/s. Sagar Enterprises a contractor of ONGC, in denying to accede to the charter of demands raised by the Transport and Dock workers Union vide its letter dated 12th July, 1993 is legal.

S. B. PANSE, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

का.आ. 149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. ईस्टर्न कोलफील्ड्स लि. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं.-2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एल-20012/165/92-आईआर(सी-I)]
सनातन, डैस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 149.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Eastern Coalfields Ltd. and their workman, which was received by the Central Government on 22-12-97.

[No. I-20012/165/92-IR(C-I)]
SANATAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 94 of 1993

PARTIES :

Employers in relation to the management of Chitra Colliery of M/s. Eastern Coalfields Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

State : Bihar.

Industry : Coal.

Dated, Dhanbad, the 12th December, 1997

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (165)/92-I.R. (Coal-I), dated, the 13th July, 1993.

SCHEDULE

"Whether the action of management of M/s. Eastern Coalfields Ltd., S. P. Mines, Chitra in superannuating the workman Shibu Kole w.e.f. 2-5-90 is justified? If not, to what relief the concerned workman is entitled?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But none of the parties turned up nor took any steps. Then again notices were issued to them but in spite of issuance of notice to them they neither appeared nor took any steps. It therefore leads me to an inference that presently there is no dispute existing between them and in the circumstances I have no other alternative but to pass a 'no dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

का.आ. 150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एल-12011/8/94-आईआर (बी-II)]
सनातन, डैस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal.

Calcutta as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 22-12-97.

[No. L-12011/8/94-IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 30 of 1994

PARTIES :

Employers in relation to the management of
Punjab National Bank

AND

Their workman

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding
Officer

APPEARANCE :

On behalf of Management : Mr. Joy Roy,
Assistant Manager (Personnel)

On behalf of Workman : Mr. Subrata Chatterjee with Mr. Anupam Mitra and Mr. Amitava Dey.

STATE : West Bengal INDUSTRY : Banking

AWARD

By Order No. L-12011/8/94-IR(B-II), dated 20-9-1994 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Punjab National Bank, Calcutta in not allowing the Tellers to officiate in the leave vacancies of Head Cashier category ‘C’ in Kharagpur and Midnapur branches is justified ? If not, what relief are the Tellers entitled to ?”

2. Shorn of details, the union's case is that apart from other categories of posts, the post of Category ‘A’ and Category ‘C’ Head Cashier carry with them special allowance of Rs. 189 and Rs. 316 respectively. In terms of Clause 5.6 of Industrywise Bipartite Settlement dated 19-10-66 vacancies in the Category ‘A’ Head Cashier are being exclusively filled up on the basis of townwise

seniority from amongst the Clerk-cum-Cashier only. The vacancies in the Category ‘C’ Head Cashiers are being filled up from amongst the Category ‘A’ Head Cashiers on townwise seniority basis. Clerks having designation as Clerk-cum-Cashiers are eligible for selection as Teller and Category ‘A’ Head Cashier on townwise seniority basis. Thus, when a vacancy of a Teller arises in any office of the Bank at any down the seniormost Clerk-cum-Cashier, Clerk-cum-Typist and Clerk-cum-Godown Keeper get the offer to such vacancy. The management had been allowing the Teller to officiate in the leave vacancy of Category ‘C’ Head Cashier since the creation of the post of Tellers where Category ‘A’ Head Cashier is not available in the various branches of the Bank in the State of West Bengal. If Tellers are not available for officiation, Clerk-cum-Cashiers could officiate for the said post. On 19-7-1993 the management issued letters to its Kharagpur and Midnapur Branches that a Teller is not eligible for officiation to the post of Head Cashier Category ‘C’. They also referred to the settlement dated 30-9-1992 and the decision in the industrial relations machinery meeting held between the Bank and other Union. The union has alleged that such decision having been taken by the management in course of the meeting with the other union and effecting its interest adversely, the said decision cannot be binding on them. The matter was referred to the A.L.C.(C), Calcutta and that having concluded in failure, the matter was referred to the Central Government, which sent the present reference to this Tribunal for adjudication.

3. The Bank, on its part, has filed a written statement denying the allegations of the union. The Bank has relied on conciliation settlement dated 30-9-1982 entered into between the management of the Bank with the representative of the majority trade union A.I.P.N.B. Employees Federation which, according to it governs the policy and procedure for selection of Category ‘C’ Head Cashier. The Bank has made special reliance on the procedure for appointment of Category ‘C’ Head Cashier as laid down in the conciliation settlement. It prescribed that selection to the post of Head Cashier Category ‘C’ shall be made on the basis of the seniority of the Head Cashiers and Clerk-cum-Cashiers and Clerk-cum-Cashier In-charge Category ‘A’ as town as a unit and that in implementing the above scheme some Head Cashiers Incharge of Category ‘C’ and ‘A’ would be required to move to the other office in the station/area. The Bank accordingly alleges that a special mode for selection of Category ‘C’ Head Cashier having been formulated in the settlement, the same procedure must be followed in giving permanent posting as well as placement of its employees on officiating basis. In the industrial relations machinery meeting with the representative of the majority union, it was agreed that the posting of Category ‘C’

Head Cashier shall be made on the basis of townwise seniority of the Category 'A' Head Cashier excluding Tellers. The Bank accordingly alleges that since it was following the procedure laid down in the conciliation settlement in the officiating appointment of Category 'C' Head Cashiers, the claim of the union should be rejected.

4. Heard the representatives of both the parties.

5. The management and the union have examined one witness each on their behalf in this case. The oral evidence produced by the parties shall not be of much help in this matter as the main question concerning this reference is with regard to the interpretation of the conciliation settlement of 1982.

6. The only point for consideration in this case is whether the Tellers are to officiate in the leave vacancy of Category 'C' Head Cashier in Kharagpur and Midnapur branches of the Bank. The union has alleged that prior to the conciliation settlement in 1982 the prevalent practice was to recruit the seniormost person from the Tellers for officiation in the leave vacancy of Category 'C' Head Cashier. There cannot be any doubt that the position has undergone a change after the conciliation settlement of 1982 was made. That settlement specifically prescribes that the vacancies occurring in the Category 'C' Head Cashiers in a branch shall be filled up from Category 'A' Head Cashiers. Special guideline having been formulated in the said settlement for such appointment, there cannot be any doubt that the parties are to abide by the said settlement.

7. The representative of the union however argued that the union is not disputing the proposition that Category 'C' Head Cashiers' vacancies are to be filled up from amongst the Category 'A' Head Cashiers. He however submitted that in any particular branch like Midnapur and Kharagpur each of which has only one branch of Punjab National Bank, what will happen if the above procedure is followed. According to him, the station having one Category 'C' Head Cashier may not be equipped with one Category 'A' Head Cashier. He further submitted that the procedure laid down in the conciliation settlement in respect of selection of Category 'C' Head Cashier, does not specifically lay down any procedure for selection in the officiating basis for filling up of the leave vacancy. That part of the settlement accordingly shall not be applicable in selection of such Head Cashiers on officiating basis. He further submitted that the seniormost persons in a particular branch or station of the Bank after Category 'C' Head Cashier is Teller and the Clerk-cum-Cashiers are juniors to such Tellers. It may be that if such Clerk-cum-Cashier is offered the vacancy ignoring the claim of the Teller for such officiation, a person junior

to him would receive higher pay than him and that in service matters no junior can be allowed to draw higher pay than that of a senior.

8. The representative of the management however submitted that the Bank is bound to follow the procedure laid down in the conciliation settlement for selection to the post of Category 'C' Head Cashiers. According to him no distinction should be made between regular posting and posting on officiating basis.

9. Upon careful perusal of the conciliation settlement, I do not find anything containing instruction for filling up the post on officiating basis. In the absence of any such procedure in the conciliation settlement about selection on officiating basis, I think that the rules concerning seniority should be followed and if the next senior person is the Teller who has sufficient knowledge of maintenance of cash accounts and ledger keeping, there can be no reason why such person be deprived of his chance for officiating in the leave vacancy of Category 'C' Head Cashier. The considerations for selection against permanent vacancy and for officiating in such post are guided by two entirely different reasons. In the former case the guideline prescribed in the relevant rules or conciliation settlement or orders are to be strictly followed but officiating appointment in any post being merely a stop gap arrangement, the consideration for such appointment should be that no junior employee can enjoy the benefit of higher pay by reason of such officiation than what his senior in service is getting. I, accordingly agree with the contention of the representative of the union that the Tellers having experience in maintenance of cash and ledger should get the chance of officiation in the post of Category 'C' Head Cashier when the same fall vacant in a single branch station or area.

10. In view of what gone above, the Bank was not justified in not allowing the Tellers to officiate in the leave vacancy of Category 'C' Head Cashier in Kharagpur and Midnapur branches. The Bank is accordingly directed to allow the Tellers to officiate in the leave vacancy of Category 'C' Head Cashier in Kharagpur and Midnapur branches whenever such vacancies occur.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 4th December, 1997.

नई दिल्ली, 23 दिसम्बर, 1997

का.अ.० 151 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोक्ता और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में श्रम व्यापारिकरण, कोझिकोड के मंच को प्रकाशित करता है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एन-12012/82/94-आई० आर० (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 151.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court Kozhikode as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 22-12-97.

[No. L-12012/82/94-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE KERALA STATE

Dated this the 31st day of October, 1997

PRESENT :

Shri P. Q. Barkath Ali, B.Sc., LL.B., Presiding
Officer.

I.D. (C)1/94

BETWEEN

The Regional Manager,
Central Bank of India,
Regional Office,
Geo Towers,
Sahodaran Ayyappan Road,
Kochi-682 016

...Management.

AND

Smt. Ambujakshi,
Choolikandi House,
Thavakkara,
Kannur-2.

...Worker.

Representations:—

M/s. Menon & Pai, Advocates, Kochi—For
Management.

Sri H. B. Shenoy, Advocate, Kochi.—For
Worker.

AWARD

This is an industrial dispute between the management of Central Bank of India and its worker Smt. Ambujakshi regarding the justifiability of the

action of the management in terminating her services which is referred for adjudication to this court by Order No. L-12012/82/94-IR(B-II) dated June 29, 1994 of Ministry of Labour, Government of India.

2. The material averments in the claim statement filed by the worker in brief are these :—The worker was employed as a Safai Karmachari i.e. Part-time Sweeper in the Kannar branch of the management bank from July 16, 1983 onwards. She was appointed in the permanent vacancy that arose on the retirement of the then Sweeper Smt. K. V. Kalliyani Amma. She was not paid the wages or other privileges of a permanent worker. Clause 3 of the Circular No. C.O. 90-91 : 622 dated March 12, 1991 of the management bank provides that a temporary worker who has completed 240 days of continuous service is entitled to be absorbed as a permanent worker. But no steps were taken by the management to absorb the worker in the regular service. When the worker claimed the wages and privileges of a permanent employee she was illegally retrenched from service on July 6, 1992. The management has not complied with the conditions stipulated in Section 25F of the Industrial Disputes Act while retrenching the service of the worker. Therefore the retrenchment of the worker is illegal and ab initio void. That being so, the worker is entitled to be reinstated in service with full back wages, continuity of service and other attendant benefits. Therefore an award may be passed directing the management to reinstate the worker in service with backwages, continuity of service and other attendant benefits.

3. The management filed a statement contending thus:—It is not correct to say that the worker was engaged as a Safai Karmachari. She was engaged as a Sweeper on casual basis as and when the work was available. She has not worked for more than 240 days in a year. The management bank is a public sector undertaking and can only appoint persons according to the Recruitment Rules. The worker was not appointed under any Recruitment Rules. As the worker was not a permanent employee she is not entitled to the wages and privileges of a permanent worker. The termination of the service of the worker cannot be treated as retrenchment. She has also no qualification to be absorbed in regular service as provided in the circular mentioned in the petition. Therefore an award may be passed rejecting the claim of the worker.

4. The worker filed a rejoinder denying the allegations in the statement of the management.

5. The following points arise for consideration.—

- (1) Whether the worker has worked continuously for a period of 240 days during a period of 12 calendar months as provided in Section 25(B) of the Industrial Disputes Act?
- (2) Whether the worker is entitled to claim permanency and protection under section 25F of the Industrial Disputes Act?
- (3) Whether there was any denial of employment to the worker by the management as alleged by the worker? If so, whether such denial is justified?

(4) What are the reliefs to which the worker is entitled to ?

6. The worker was examined as WW1 and Ext. W1 was marked on the side of the worker. MW1 was examined and Exts. M1 to M3 series were marked for the management.

7. Point Nos. 1 and 2.—The case of the worker as testified by her as WW1 is that she was employed as a Sweeper in Kannur branch of the management bank from July 16, 1983 onwards, that she was denied employment from July 6, 1992 onwards and that the termination of her service is illegal as she had worked continuously for more than 240 days during a period of 12 calendar months. The management contended that the worker was engaged only casually on daily wages and that she never worked continuously for 240 days during a period of one year and that therefore she is not entitled to be reinstated in service. Therefore the question is whether the worker has worked under the management continuously for 240 days during a period of 12 calendar months.

8. The burden is on the worker to prove that she has worked under the management continuously for a period of one year to claim permanency and protection under Section 25F of the Industrial Disputes Act. A worker shall be deemed to be in continuous service for one year if she has worked continuously for a period of 240 days during a period of 12 calendar months as provided in Section 25(B) of the Industrial Disputes Act. It has been held in *N. C. Jhon v. Secretary, Thodupuzha Taluk Shops and Commercial Establishment Workers Union* (1972 KLR 498) that the burden of proof is on the worker to establish the employer-employee relationship and that in attempting to discharge that burden, the worker may call for the books of account and other records of the management, and if the management refuses to produce them an inference may be drawn against him, if the said documents were produced they would have shown what the worker wanted to make out. The ratio of the above decision applies to the present case also. In the case on hand the worker called the management to produce the vouchers for the relevant period regarding the wages paid to her, but the management produced only some of the vouchers. MW1, the present Deputy Manager of the Calicut Branch of the bank has no explanation to offer for the non-production of remaining vouchers. As held in the above case, therefore, it has to be inferred that if all the vouchers are produced it would have shown that the worker had worked in the management bank for more than 240 days during a period of 12 calendar months.

9. Further, the evidence of MW1 is not satisfactory. He admitted when cross-examined that he came to the branch office of the management bank at Kannur only in 1990 and that he does not know who worked as Sweeper in that branch prior to that date. He further admitted that his office time was 9.30 A.M. and that by the time he reached the office, the Sweeper would have gone after finishing her work. Therefore the evidence of MW1 cannot be relied on. In an attempt to show that the worker did not work

for 240 days in a year the management produced Exts. M1 and M2, the Current Account Pass Books of Part-time employees of that branch of the management bank for the periods from January 28, 1988 to October 27, 1989 and from October 31, 1989 to March 1, 1993 respectively. Usually the wages of the temporary employees are credited in their account and paid to them. It is seen from Ext. M1 and M2 that there was another part-time sweeper by name Ammu during the relevant period and that the worker was employed only for 3 or 4 days in a week. But MW1 was not in a position to say whether there was any other part-time sweeper employed during the period mentioned in Ext. M1 and M2. Further, the vouchers regarding the payment of wages to the other part-time sweeper Ammu were not produced by the management to show that actually there was such a part-time sweeper during the relevant period. The specific case of the worker was that she was working in that branch from 1983 onwards and that during that period there was no other part-time sweeper in that bank. The vouchers for the period prior to 1985 were not produced by the management. Under these circumstances, I am inclined to hold that the management has failed to show that the worker did not work for more than 240 days in a year under the management.

10. It is common knowledge that sweeper has to attend the duties on all days. As there is no reliable evidence to show that there was any other sweeper working in the management bank during the relevant period it has to be taken that the worker attended the office on all days in a year. Having regard to all these facts and circumstances, rejecting the evidence of MW1 and accepting the evidence of WW1, I hold that the worker had worked under the management continuously for a period of 240 days during a period of 12 calendar months as provided in Section 25B of the Industrial Disputes Act and that therefore she must be deemed to be in continuous service for more than one year as mentioned in 25F of the Industrial Disputes Act.

11. Point No. 3.—Next question for consideration is whether there was any denial of employment to the worker by the management, if so, whether such denial is justified. The worker as WW1 testified that she was denied employment from July 6, 1992 onwards, which is not challenged during cross-examination. Further the management has no case that the worker had worked in the bank after July 6, 1992. Therefore believing the evidence of WW1, I hold that she was denied employment from July 6, 1992 onwards. I have found that the worker has worked under the management continuously for a period of 240 days as provided in Section 25B and 25F of Industrial Disputes Act. It follows that for terminating the service of such a worker, management has to comply with the provisions of Section 25F of the Industrial Disputes Act. Admittedly no notice or pay in lieu of notice or retrenchment compensation was paid to the worker by the management as provided in Section 25F of the Industrial Disputes Act. It follows that the termination of the service of the worker by the management is illegal and cannot be justified.

12. Point No. 4.—This leads me to the next question regarding the reliefs to which the worker is entitled to. In view of my above findings, the worker is entitled to be reinstated in service as a temporary Sweeper in the station in which she was working with continuity of service and other attendant benefits. Clause 3 of circular No. C.O : 90-91 : 622 dated March 12, 1991 issued by the Head Office of the management Bank copy of which is marked as Ext. W1, provides that the temporary employees who have put in 240 days of temporary service in any continuous period of 12 months will be considered for absorption in the immediate available vacancy without any test and interview. That being so, the worker is entitled to be absorbed in the regular service of the bank in the immediate available vacancy as provided in the above mentioned circular. As regards back wages, the worker was getting wages only as and when there was work. There is no reliable evidence regarding the availability of work or whether it was continuous or not, WW1 did not testify regarding the wages she was getting. Therefore I am of opinion that a lumpsum amount of Rs. 5000 would be reasonable towards back wages.

13. In the result, an award is passed holding that termination of the service of the worker by the management is not justified. Management shall reinstate the worker in service as temporary sweeper with continuity of service and other attendant benefits within one month from the date of publication of this award in the Official Gazette. For the foregoing reasons, she is entitled to Rs. 5000 towards back wages.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 31st day of October, 1997.

P. O. BARKATH ALI, Presiding Officer.

APPENDIX

Witnesses examined on the side of the Management:—

MW1 C.O.T. Usmankutty S/o. A. D. Moidu,
Witnesses examined on the side of the Worker:—
WW1. Ambujakshi, C. D/o. Govindan.

Documents marked on the side of the Management:—

Ext. M1..Daily Wages for the period from 28-1-1988 to 4-10-1989

Ext. M2.. —do-- 30-10-1989 to 10-10-1992.

Ext. M3..Vouchers.

Documents marked on the side of the Worker:—

Ext. W1..Photostat copy of the Circular No. CO : 90-91 : 622 dated 12-3-1991 issued by management.

नई दिल्ली, 23 दिसम्बर, 1997

कां०आ० 152—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध निर्याजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, I, हैदराबाद के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-97 को प्राप्त हुआ था।

[सं. एन-12012/130/96-आई० आर० (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 23-12-97.

[No. L-12012/130/96-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated : 6th day of December, 1997

INDUSTRIAL DISPUTE NO. 25 OF 1997

BETWEEN

The General Secretary,
Dena Bank Staff Union (NCBI)
C/o Dena Bank, Jamai Osmania,
Secunderabad. Petitioner.

AND

The Asstt. General Manager,
Dena Bank,
Regional Office, Sona Towers,
1st Floor, 71, Millers Road,
Bangalore-560052.

APPEARANCES :

G. Madhav, General Secretary, petitioner in person.

Respondent Set ex. party.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-12012/130/96/IR-(B-II) dated 13-5-97 under section 10(1)(d) and

2(A) of the I.D. Act, 1947 has referred the following dispute for adjudication :—

“Whether the action of the management of Bena Bank in granting special allowance for Data Entry Operator in conformity with Paras III & IV of the Memorandum of Settlement, Dt. 10-5-1985 ? If not, to what relief the said employee is entitled ?”

The General Secretary of the Union appeared in person and filed a claim statement. The respondent bank appeared through an advocate on 15-7-97 which is the first date of appearance. The advocate offered to file vakalat but did not file vakalat on 19-8-97 to which date the case was adjourned. So the respondent bank is Set Ex-parte.

(2) The General Secretary filed a claim statement contending as follows :—

The Regional Authority of the Dena Bank at Hyderabad and the Manager, Gagan Mahal branch wilfully violated the settlement dated 12-6-85 which was entered into by the bank and union u/s. 2(P) of I. D. Act with regard to payment of Data Entry Operator allowance to Smt. Abhita Mahalingam, the Seniormost employee working in Gaganmahal branch. The Data Entry machine was installed at Service branch on 30-6-94. So the post of Data Entry Operator arose on the said date. The said post has to be filled up on or before 30th August, 1994 as per the clause II of the special allowance settlement dated 12-6-85. Smt. Abhita Mahalingam hereafter to be called as petitioner was transferred to Hyderabad at her request and thereby she was foregone her Data Entry Operator allowance. She is entitled to the said allowance one month after joining at Hyderabad centre. The Management deliberately delayed filling up of the said post in service branch though the petitioner was available for being posted in the said post. Thus, there is violation of Clause IV of special allowance settlement dated 12-6-85. A right to the allowance date accrued to her under Clause IV which reads as follows :

“Allowance shall accrue from the date of performance of duties carrying special allowance, if an order to that effect is given in writing to the employee. If such order involves the transfer of the employee from one branch/department to another branch/department, it will be effected within one month of the issue of the Order the Branch Manager/Departmental head responsible for relieving the eligible employer will have to inform immediately the circumstances compelling him not to relieve the con-

cerned employee to the Regional Manager/Personnel Department as the case may be, and will have to obtain permission in this behalf from Regional Manager/Personnel Department as the case may be. Till, however, the payment of allowance to the concerned employee shall accrue from the expiry of one month from the date of issue of the order. If the promotion of such employee is effected during the interim period of one month, then for the purpose of his/her fitment in the promoted cadre, the special allowance shall be taken into consideration.”

The Branch Manager of Gaganmahal Branch without obtaining permission of the Regional Manager retained the petitioner in the branch and deprived her the allowance from 21st November, 1994, and resorted to unfair Labour practice. She was paid allowance from 12th January, 1995 only. She made a representation in this regard but there was no reply. So the union raised a dispute. The management paid the Data Entry Operator allowance from 21st November, 1994 during the conciliation proceedings but she is entitled to the said allowance from 30th August, 1994 i.e. within two months from the date when the vacancy arose i.e. on 30th June, 1994. The petitioner is entitled to relief sought in the reference.

(3) The workman petitioner is examined as WW1. She filed Ex. W1 to W3.

(4) The point for consideration is :—

“Whether the petitioner is entitled to special allowance of Data Entry Operator from 30th August, 1994 ?”

(5) Point.—The petitioner is working in the Regional office at Madras as Data Entry Operator since, 1989. At her request, she was transferred to Hyderabad in 1993 and posted in Gaganmahal branch. She is not paid the Data Entry Operator allowance since the date of her transfer, as she was transferred at her request. She is not entitled to this allowance for one year only as per Clause V of Ex. W1 settlement dated 12th June, 1985, she is entitled to the allowance from 27th May, 1994. She is not paid the said allowance from that day. She is posted as Data Entry Operator in the service branch in bank street on 21st October, 1994 by Ex. W2 order. The machine was installed on 30th June, 1994. The post has to be filled up within 2 months after the installation of the machine. As the post carries special allowance, she would have been posted in August, 1994 itself. Since the posting was delayed, she is paid from 1st February, 1995. The Bank Manager, Gaganmahal branch

did not relieve her till 15th January, 1995. Another employee by name Jaggaraju was paid special allowance of cashier category 'A' from October, 1994, though he was also relieved on 15th January, 1995. Thus she is entitled to the allowance.

(6) The evidence and the documents support the claim of the petitioner. Hence, the reference is accepted and an Award is passed directing the respondent to pay the said allowance to the petitioner from 30th August, 1994.

Dictated to the Sr. Stenographer, transcribed by her, corrected by me, given under my hand and the seal of this Tribunal on this the 6th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

APPENDIX OF EVIDENCE

Witnesses examined for the petitioner :

WW1 : Abhita Mahalingam.

Witnesses examined for the respondent :
Nil.

Documents marked for the petitioner :

Ex. W1 : Settlement dated 12th June, 1985 in respect of workmen staff to posts carrying special allowance other than Special Assistants, Stenographers, Agricultural Assistants.

Ex. W2 : Order dated 21st October, 1994 given to WW1 to work as Data Entry Operator.

Ex. W3 : Representation dated 15th March, 1995 made by the WW1 to the Assistant General Manager, Dena Bank, Bangalore.

नई दिल्ली, 26 दिसम्बर, 1997

का.आ. 153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ मैसूर, बंगलौर के प्रबन्ध तंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में, निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-97 को प्राप्त हुआ था।

[संख्या एल-12012/3/94-आईआर (बी-1)]

सनातन, डेस्क अधिकारी

New Delhi, the 26th December, 1997

SO 153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government 17 GI/98-7

Industrial Tribunal, Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Mysore, Bangalore and their workman, which was received by the Central Government on the 23-12-1997.

[No. L-12012/3/94/IR (B.I.)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT BANGALORE

PRESENT :

Sri K. Mohanachandran, B.Sc., B.L., D.L., A.L.

Presiding Officer

Central Reference No. 40/94

Sri S. H. Bhujang Rao,
S/o Shri Hanumantha Rao,
P-99, III Cross, Nagappa Block,
Srirampuram, Bangalore-560 021.

Vs.

The Managing Director,
State Bank of Mysore,
Head Office, K. G. Road,
Bangalore-560 009.

AWARD

In this reference made by Honourable Central Government in its Order No. L-12012/3/94-IR B.I. dated 31-3-1994 (registered as CR No. 40/94) the point for adjudication is as follows :—

“Whether the action of the management of State Bank of Mysore in terminating the services of Sri S. H. Bhujang Rao, Temporary sub-staff is justified? If not, to what relief the employee is entitled to?”

On issuance of notice to both the parties Shri R. Narayana Advocate filed vakalat for II party on 26-4-1994. But the I party had not entered appearance. Anyhow after a long absence, the I party was present in the court on 6-6-1994 for the first time. Hence my predecessor had directed him to file claim statement. But on subsequent hearing namely on 5-7-1994 and 26-8-1994 though the I party was present in the court, he had not filed any

claim statement. The above said particulars could be seen from the notes order maintained in this case.

Subsequently when the present Presiding Officer had taken charge, the I party was given continuous opportunities for filing claim statement. Lengthy further opportunities were also given for the I party to file claim statement. Then finally on 21-10-1997 a fresh court notice by registered post acknowledgement due was ordered. Accordingly the said notice was served to the I party on 29-10-97 for the hearing date 28-11-97. But even on 28-11-97 the I party had not appeared. Again to give one more final opportunity, case was adjourned for 16-12-97 for appearance of the I party and his claim statement.

As this juncture it is necessary to note that the II party also neither appeared nor his counsel present. Presumably the II party might have thought that since the I party not appeared and cared enough to file his claim statement, they need not appear. Under such peculiar circumstances this tribunal is unable to get any sort of particulars from either positive or negative from either of the parties. Therefore, I am of opinion that considering the entire circumstances, pendency of the case for a very long period, namely from the year 1994, the I party might have lost interest to proceed further in the case. Therefore, I hold that in the above said peculiar circumstances this case is a fittest case to meet the ends namely the closure of the case.

AWARD

In the result the Central Reference No. 40/94 is rejected. Submit to the Government.

(Dictated to P.A. transcribed by him, corrected by me and signed on this Tuesday the 16th day of December, 1997).

K. MOHANACHANDRAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 1997

का.ग्रा. 154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल वेयर हाउसिंग कारपोरेशन, के प्रबंधकों के संबंध में नियोजकों और उनके कर्मचारों के बीच, अन्तर्गत में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचपट को प्रकाशित करती

है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एन-42012/3/89-आर्वायर (विवाद)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 22nd December, 1997

S.O. 154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on the 22-12-1997.

[No. L-42012/3/89-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI.

I.D. No. 75/1989

In the matter of dispute :

BETWEEN :

General Secretary, Central Warehousing Corporation Employees Congress, 4/1, Siri Institutional Area, Hauz Khas, New Delhi-110 016.

Versus

Personnel Manager, Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, Houz Khas, New Delhi-110 016.

APPEARANCES :

Miss Ashoka Jain, Counsel for the Management, Shri S. C. Sharma, General Secretary, Central Warehousing Corporation Employees Congress with Shri D. S. Verma, the concerned workman.

AWARD

The Central Government of India in the Ministry of Labour, vide its Order No. L-4292/3/89-IR (Misc.), dated (illegible) has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Warehousing Corporation, New Delhi in reverting Shri D. S. Verma from the Post of Junior Technical Assistant to that of Warehouse Assistant Grade-II is justified ? If not, what relief is the workman entitled to ?"

2. The concerned workman, Shri D. S. Verma, joined Central Warehousing Corporation as LDC on 1-11-1969. Subsequently, he was selected as junior

Technical Assistant through direct recruitment by the Central Warehousing Corporation, vide Office Memorandum dated 11-8-1983. He joined duty as Junior Technical Assistant on and from 22-8-1983 at the Regional Office at Bhopal. As per terms and conditions of the Central Warehousing Corporation Staff Regulations, he was appointed on probation of one year, which was extendable for a further period of one year. However, his services were terminated vide letter dated 19-8-1985 and he was reverted to his earlier post of LDC (WA-II).

3. The main grievance of the concerned workman is that at the time of receipt of the order of his termination, he had already completed two years of service as Junior Technical Assistant. It is further alleged by him that during his two years as Junior Technical Assistant, he has never been issued any Memorandum containing any warning in regard to his work and conduct. It is further alleged by him that the Memo dated 18-1-1985 communicated to him, was duly represented by him against the adverse remarks therein well within time, vide his letter dated 13-2-1985 to which no reply has been received by him from the management. It is also alleged that the annual confidential report relating to his work and conduct was not written by the concerned officer under whom he had worked, which is against the Staff Regulations and the Principles of Natural Justice. He has contended that in the absence of any adverse remarks during the period of probation, his period of probation is deemed to be over satisfactory. It is also alleged by him that last extension of his probation, vide Memo dated 3-7-1985 for a period of one month and 22 days, was against the rules and provision of the Central Warehousing Corporation Staff Regulations. In their written statement, the management have denied all these allegations of the concerned workman.

4. The Management have filed 28 documents alongwith Central Warehousing Corporation Staff Regulations, and have examined Shri Har Prasad, Senior Assistant Manager (Estt.) in Head Office as M/W 1/1.

5. The concerned workman has filed 6 documents annexed to his claim statement, and has examined himself as WW 1/1.

6. I have heard the representatives of both the Parties, and have gone through the evidence on record.

7. It is not disputed that the period of probation of the concerned workman was from 22-8-1983 to 22-8-1985. It is also not disputed that his services were terminated vide letter dated 19-8-1985, and reverted to the substantive post of W. A.-II.

8. Relevant part of Regulation 7 of Central Warehousing Corporation Staff Regulation, read as under :—

"I. Every employee shall, on appointment to any post, be on probation in that post for a period of one year commencing from the date of appointment.

Provided that such period may be further extended for a period not exceeding one year in all at the discretion of the appointing authority."

9. Regulation No. 2(n) of the aforementioned Regulations is read as under :—

"'regular employee' means an employee, who has been declared to have completed the period of probation to the satisfaction of the appointment authority."

10. From the aforementioned regulations, it is clear that the maximum period of probation is upto two years and the confirmation is subject to the satisfaction of the appointing authority.

11. Now, let me examine the evidence on record relating to the work and conduct of the concerned workman during the period of his probation as Junior Technical Assistant.

12. From the perusal of documents filed by the Management as also from Annexure II, IV and V filed by the concerned workman, it is amply clear that his work and conduct during the period of his probation, was not found satisfactory, as a result of which he could not be confirmed and his services were terminated vide letter dated 19-8-1985 and reverted to W.A. II. In his cross-examination, the concerned workman has admitted that he has not been confirmed as Junior Technical Assistant and remained on probation. From Memorandum dated 18-1-1985 on record, it is also amply clear that communication of adverse remarks from the confidential report was communicated to him even during his period of probation. The Memo dated 18-1-1985, 9-4-1985, and 3-7-1985 extending the period of his probation also reflect that he was advised to improve his work and conduct and to be regular in attendance in future. Even otherwise also, extension of period of probation implies in itself that his work and conduct was not up to the expectation.

13. The Memorandum dated 18-1-1985, 9-4-1985 and 3-7-1985, read as under :—

REGISTERED

"CENTRAL WAREHOUSING CORPORATION (A GOVERNMENT OF INDIA UNDERTAKING).

"WAREHOUSING BHAWAN"
4/1, SIRI INSTITUTIONAL
AREA HAUZ KHAS NEW
DELHI-110 016.

No. CWC/I-3120/Estt.

Dated, 18th, January, 1985

MEMORANDUM

The following adverse remarks from the Confidential Report for the period ending 21-8-1984 in respect of Shri D. S. Verma, Jr. Technical Assistant, Central Warehouse, Hoshangabad are hereby com-

municated to him for his information and guidance :—

"General Assessment"

"He lacks interest to undertake his job and is reported to be highly quarrelsome with his fellow colleagues. He also failed to develop cordial relations with the various parties. Complaint was also received from Supdt. (Custom) about his ill behaviour. He is ill mannered and indisciplined worker. He has been reprimanded on several occasions. Most of the time remained on leave or absented from duty."

"Substance of the other remarks is also given below :—

"State of Health is good. Technical knowledge and timely submission of reports are average."

He is also required to acknowledge the receipt of this memo. He is also informed that if he wishes to represent against the above adverse remarks, he must send his representation in duplicate through proper channel within one month from the date of issue of this memo.

Sd./-

S. M. TIWARI, Jt. Manager (Personnel).

To,

Shri D. S. Verma,
Jr. Technical Assistant,
Central Warehouse,
HOSHANGABAD.

N. O. O.

Copy to :—1. The RM., CWC., RO., Bhopal.
2. The RM., CWC., RO., Calcutta.
3. Guard file.

REGISTERED.

CONFIDENTIAL

"CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)
"WAREHOUSING BHAWAN"
4/1, SIRI INSTITUTIONAL AREA
HAUZ KHAS, NEW DELHI-110 016.

No CWC/I-3120/Estt.

Dated : 18th January, 1985.

MEMORANDUM

Shri D. S. Verma, Jr. Technical Assistant, Central Warehouse, Hoshangabad is hereby informed that as his work and conduct was not satisfactory and he remained abnormally absent/on leave during 1st year of his service as Jr. Technical Assistant, his probation period has been extended by six months but this extension will be from the date determined after taking into account the continuous period of absence from duty i.e. 2-1-1985 and as such his probation period has now been extended upto 2-7-1985.

He is, therefore, advised to improve his work and conduct and be regular in attendance in future.

He is also required to acknowledge the receipt of this memo.

Sd./-

S. M. TIWARI, Jt. Manager (Personnel).

"CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)
"WAREHOUSING BHAWAN"
4/1, SIRI INSTITUTIONAL AREA
HAUZ KHAS, NEW DELHI-110 016.

No. CWC/I-3120/Estt.

Dated : 9th April, 1985.

To,

The Regional Manager,
CWC, Regional Office,
BHOPAL.

Sir,

With reference to your letter No. CWC/RO-BPL/I-DSV/Estt./17208, dated the 23rd March, 1985. I am directed to state that the probation period of Shri D. S. Verma, Jr. Technical Assistant, CW, Hoshangabad has been extended upto 2-7-1985. On expiry of this period, you may kindly send a report so that his transfer to some other region will be considered as per your recommendation. Since, now less than 3 month's period remains to complete the extended period of probation, it will not be proper to transfer him at this stage as the Reporting Officer has to assess his work for not less than a period of three months and in case of his transfer at this stage, the Reporting Officer will not have the three months period as the extended period of probation expires on 2-7-85.

Further necessary action regarding his transfer will be taken on receipt of a report from you after the extended period of probation as mentioned above.

Your faithfully,

Sd./-

M. CHOUDHURI, Dy. Manager (Estt.)

CONFIDENTIAL
BY REGD. POST.

"CENTRAL WAREHOUSING CORPORATION"
(A GOVT. OF INDIA UNDERTAKING)
"WAREHOUSING BHAWAN".

4/1, SIRI INSTITUTIONAL AREA,
HAUZ KHAS, NEW DELHI-110 016.

No. CWC/I-3120/Estt.

Dt. 3-7-1985

MEMORANDUM

In continuation of this office memo of even number dated 18-1-1985, Shri D. S. Verma, Junior

Technical Assistant, Central Warehouse, Indore-I, is hereby informed that his probation period has been extended for a further period i.e. upto 22-8-85.

He is therefore advised to improve his work and be regular in attendance.

He should acknowledge receipt of this memo.

Sd./-

Mrs. M. CHOUDHURI, Dy. Manager (Estt.)

To,

Shri D. S. Verma,
Jr. Technical Assistant,
Central Warehouse,
Indore.

Copy to :—

1. The RM, CWC, RO, Bhopal.
2. WM, CW, Indore-I.
3. M-9 (Tech.), CWC, New Delhi.
4. Personal File/Guard File.

14. Thus, on the material on record before me, it is established that the work and conduct of the concerned workman, during the period of his probation, was not satisfactory and the management was fully justified to have come to the conclusion that the concerned workman had failed to make any improvement in his work and conduct and, therefore, was not found fit for confirmation as JTA.

15. It is settled rule that probation connotes the period of trial and its purpose is to find out the suitability to hold the post substantively or permanently and the fitness or suitability has to be judged at the time of confirmation. The case law cited by the concerned workman has no application on the facts and circumstances of the present case.

16. Therefore, my award is that the action of the management of Central Warehousing Corporation, New Delhi in reverting Shri D. S. Verma from the post of Junior Technical Assistant to that of Warehouse Assistant-II is justified, as a result of which the concerned workman is held not entitled to any relief.

17. Award is given accordingly.

Dated : 1st December, 1997.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 24 दिसम्बर, 1997

का.अ. 155—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के

पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-97 को प्राप्त हुआ था।

[सं. एल-32011/2/93-ग्राईमर (विविध)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 24th December, 1997

S.O.155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Port Trust and their workman, which was received by the Central Government on the 24-12-1997.

[No. L-32011/2/93-IR (Misc.)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT CALCUTTA.

Reference No. 21 of 1994.

PARTIES :

Employers in relation to the management of
Calcutta Port Trust.

AND

Their Workmen.

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of Management : Mr. G. Mukherjee,
Senior Labour Officer (IR).

On behalf of Workman : Mr. S. Chatterjee,
Joint Secretary of the Union.

STATE : West Bengal.

INDUSTRY : Port.

AWARD

By Order No. L-32011/2/93-IR (Misc.), dated 8-7-1994 the Central Government in exercise of its powers under section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Calcutta Port Trust, Calcutta in imposing punishment on Shri Khalifat Hossain Bhandary, D. V. Nadia (DK) by reducing his pay by one stage for one year without cumulative effect is justified ? If not, what relief the workman is entitled to ?”

2. When the case is called out today the representative of the management is present but none was present on behalf of the union. It appears that since 14-5-1996 the union has failed to produce its witness even though number of adjournments have

been taken by the union for the purpose. It is accordingly clear that the union/Workman is no longer interested in the matter.

3. In the said circumstances, in the absence of any material on record for any decision in respect of the schedule under reference, this Tribunal has no other alternative but to pass a "No Dispute" Award in this case.

4. A "No Dispute" Award is accordingly passed and the reference is disposed of.

This is my Award.

Dated : Coimbatore,

The 11th December, 1997.

A. K. CHAKRAVARTY, Presiding Officer.

नई दिल्ली, 22 दिसम्बर, 1997

का.भा. 156—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तमिलनाडु मैग्नेसाइट लि० के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास, के पक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं. एल.-27012/1/91-आईआर (विवाद)]
के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 22nd December, 1997

S.O. 156.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tamil Nadu Magnesite Ltd., and their workman, which was received by the Central Government on the 22-12-97.

[No. L-27012/1/91-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Wednesday, the 19th day of November, 1997

PRESENT:

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal

Industrial Dispute No. 3 of 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Tamil Nadu Magnesite Ltd., Salem.)

BETWEEN

The workmen represented by :

The General Secretary,
Salem District Magnesite Labour Union (CITU),
237, Tharamangalam Road,

Old Suramangalam, Salem-636 005.

AND

The Managing Director,
Tamilnadu Magnesite Ltd.,
Salem-636 302.

REFERENCE :

Order No. L-27012/1/91-IR (Misc.), dated 21-1-92,
Ministry of Labour, Govt. of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 14th day of October, 1997, upon perusing the reference claim, counter statements and all other material papers on record, upon hearing the arguments of Tvl. Row & Reddy, and S. Vaidyanathan, Advocates appearing for the petitioner-union and of Thiru M. K. Raghavan, Advocate appearing for the respondent-management, and this dispute having stood over for consideration till this day, this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :—

"Whether the action of the management of Tamilnadu Magnesite Ltd., in dismissing Shri Kozhandai Chennappan w.e.f. 19-11-1987 was justified? If not to what relief the workman is entitled to?"

2. On services of notice, both the petitioner and the respondent appeared before this Tribunal and filed their claim counter statement respectively.

3. The main averments found in the claim statements are as follows.—The workman Kozhandai/Chennappan joined the service of the respondent in 1962 as Mazdoor. He worked under the management for 25 years and his services were blemishless except the incident in question. On 22-9-87 a charge-sheet was issued to the workman alleging that he was under influence of liquor and when questioned by Supervisor, he abused the Supervisor in the presence of co-workers. He refused to go to office when he was asked to do so. The workman submitted his explanation denying the charges and that the Supervisor insulted him and he only showed his resentment to the eniry of the Supervisor. Not satisfied with the explanation submitted by the workman, the management decided to hold an enquiry and Mr. R. Jiyadevan was appointed as Enquiry Officer. Enquiry was held and the enquiry officer gave his findings on 3-11-87 holding that the charges were held to be proved which is contrary to the evidence on record. The management issued a second show cause notice dated 3-11-1987 enclosing the findings. On 16-11-87 the workman gave explanation to the second show cause notice. By an order dated 19-11-87 the worker was dismissed from service. Against the dismissal order, the workman filed an appeal before the Managing Director who gave a personal hearing on 4-1-88. On 5-1-88, the Appellate Authority Confirmed the order of dismissal with retrospective effect from 19-11-87 and it is against the dismissal order, the petitioner union has raised this Industrial Dispute. The management did not furnish the copies of complaint made by the Supervisor and hence the worker was handicapped in meeting the allegations contained in the complaint. The worker was not furnished with the copy of Certified Standing Order. The findings are contrary to the evidence on record. To tarnish the image of the worker, he was sent for medical examination on the ground that he was under the influence of liquor. The worker was not at all examined by a doctor. But, the so called doctor certificate marked in the enquiry does not show that the certificate was issued by a doctor. Even assuming without admitting, that the workman has committed the alleged misconduct, the extreme punishment of dismissal is very harsh and disproportionate to the gravity misconduct said to have been committed. Hence punishment has to be interfered with u/s. 11A of the I.D. Act, 1947. Last drawn pay of workman was Rs. 1675/- per month. He is aged about 50 years. He is without employment from 19-11-87. He is the sole bread winner of the family. Hence the petitioner prays to hold that the dismissal of the workman Kozhandai from service as illegal and to direct the respondent to reinstate the workman w.e.f. 19-11-87 with all consequential and attendant benefits and costs.

4. The main averments found in the counter statement filed by the respondent are as follows:—The workman was employed under the respondent as Mazdoor. While reporting for duty on 22-9-87, he was found to be under the influence of liquor. When the Section Supervisor of the respondent enquired him, the worker abused him in filthy language at about 8.40 a.m. At 9.00 a.m. on the same day, the said Section Supervisor gave a report to the respondent. Since the misconduct committed by the worker was violative of Clause 21(1)(7) and (8) of the Standing Orders, the workman was issued with a charge memo. He was also placed under suspension with immediate effect. The workman gave an explanation on the very same day. Since the respondent was not satisfied with the explanation, a domestic enquiry was ordered to probe into the charges levelled against the workman. Enquiry was to be conducted by the Assistant Manager (Mines). On the first day of enquiry, the workman did not participate and he subsequently wrote on 29-2-87 that he could not attend the enquiry since he was not feeling well. On 10-10-87 the workman reported for enquiry under the influence of liquor. Immediately a medical examination was conducted by the Company Medical Officer and it was found that the workman was under the influence of liquor. The enquiry was conducted on various other dates in which the workman participated. The report given by the Supervisor and Medical Certificate issued by the Company Medical dispensary were marked in the enquiry along with the other relevant documents. All possible opportunities were afforded to the workman in order to effectively participate in the enquiry. Six witnesses were examined on behalf of the management and they were cross-examined by the workman. A perusal of Ex. M-3 and enquiry proceedings would show that a confession has been made by the workman about the incident. On the basis of the findings of the Enquiry Officer and the other relevant materials, the workman was terminated from service. Earlier also when the same workman committed number of misconducts, he was dismissed from service and later on based on the representation of the union, a settlement u/s. 18(1) of the I.D. Act, was signed and workman concerned was provided employment afresh. This would show that the petitioner had given room for dismissal on earlier occasion also. On the basis of the gravity of misconduct and other relevant facts, dismissal of the workman was justified. The report on the basis of which the action was initiated was placed before the Enquiry Officer. The workman did not make any demand for copies of the report. When the documents themselves were placed before the Enquiry Officer, it cannot be called as violative of principles of natural justice in order that petitioner was prejudiced. The contention of the petitioner that the workman was not supplied with the copy of Certified Standing Orders is untenable since the same is always available with the Union. The contention that the findings of the Enquiry Officer are contrary to evidence on record is baseless. The contention of the petitioner that this Tribunal may interfere u/s. 11A of the I.D. Act, is devoid of merit. The punishment imposed on the workman is totally proportionate to the misconduct against him. The workman is not entitled for reinstatement, backwages and other consequential benefits. The respondent prays to dismiss the industrial dispute.

5. No witness was examined on behalf of the petitioner and Exs. W-1 to W-6 were marked on behalf of the petitioner. MW1 was examined on the side of the management and Exs. M-1 to M-11 were marked.

6. The Point for our consideration is: Whether the termination of service of the petitioner is justifiable? If not, to what relief he is entitled to?"

7. The Point: The workman Kozhanda/Chennappan joined the services of the respondent-management in 1962 as Mazdoor. On 22-9-87, he was issued with a charge alleging that he was under the influence of liquor and when questioned by the Supervisor he abused Supervisor in the presence of co-workers and he refused to go to office when he was asked to do so. On the same day, the said workman gave his explanation which was not accepted by the management and an enquiry was conducted with Shri Jayadevan as Enquiry Officer. The charge sheet is Ex. W-1 and enquiry notice is Ex. W-2. Appointment of enquiry officer is Ex. W-3. Explanation submitted by the workman is Ex. M-5 and M-6. Six witnesses were examined on behalf of the management and two witnesses were examined on behalf of the worker.

Exs. M-1 and M-2 have also been marked during the domestic enquiry. Enquiry Proceedings are Ex. M-1. The Enquiry Officer has found the following three charges as proved against the workman. The charges are:

- (i) On 22-9-87, in the morning, he came under the influence of liquor for work.
- (ii) He has abused Supervisor with bad words when he was enquired for the above misconduct.
- (iii) He refused Supervisor, when he was instructed to go to office. The findings of the Enquiry Officer are Ex. M-2.

The above charges have been framed for violation of Clause 21(1)(7), and (8) of the Certified Standing Orders of the respondent. All these charges were held to be proved and the petitioner was issued with second show cause notice Ex. M-7, for which the petitioner submitted his explanation and the petitioner was dismissed from service from 19-11-87. The petitioner's appeal to the Managing Director was also dismissed on 5-1-88.

8. The learned counsel for the petitioner has made an endorsement on 19-2-96 stating that the petitioner is not challenging the propriety and fairness of the domestic enquiry. Now the learned counsel for the petitioner has argued on the grounds of jurisdiction for the extreme punishment of dismissal from service and has confined himself to Section 11A of the I.D. Act. The contention of the learned counsel for the petitioner is that the punishment of dismissal from service is extreme when a workman has worked in the respondent management for more than 25 years. The learned counsel for the respondent management submitted that the petitioner's past conduct was not good and he has been several times suspended for unauthorised absence and on his pleading mercy every time he was reinstated in service. On an earlier occasion also petitioner was found in a drunken mood in the work spot and he attempted to assault a driver and therefore, disciplinary action was taken against him and charges were also held proved. But on the intervention of the union by a settlement arrived at under Section 18(1) of the I.D. Act, 1947 the petitioner was reinstated into service and the period of suspension between 5-10-82 to 6-11-82 was treated as absence and the petitioner was allowed to work w.e.f. 8-11-82. The learned counsel for the petitioner brought to my notice, the judgement of the Hon'ble Apex Court in Workmen of Bharat Fritz Werner (P) Ltd., Vs. Bharat Fritz Werner (P) Ltd., (1990 II LLJ P 226) wherein workmen who were accused of graver misconduct and against whom the charges were proved have been given compensation by the Hon'ble Apex Court. The said judgement is as follows:

"Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or, when, though, dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interest of the industry Hindustan Steel Ltd., Vs. A. K. Ray (1970 I LLJ 228). In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated momentarily by warding compensation in lieu of reinstatement for loss of future employment. The misconduct that has been found established against these five workmen involves threatening the highest executive viz., the President of Company, with dire consequences, wrongfully confirming him in his room, and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen had acted at the instigation of somebody. Taking into consideration the facts and the circumstances the case, we are of the opinion that, keeping in view the interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In our view, therefore,

the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment.

In *O. P. Bhandari Vs. Indian Tourism Development Corporation Ltd., & Ors.* (1986 II LLJ 509) this Court has held that compensation equivalent to 3.33 years salary (including allowances) as admissible on the basis of the last pay and allowance should be a reasonable amount to reward in lieu of reinstatement. In that case the Court has taken into consideration the fact that the corpus, if invested at the prevailing rate of interest (50%) will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages.

- (i) He will be getting this amount without working.
- (ii) He can work somewhere else and can earn annually whatever he is worth over and above getting 50% of the salary he would have earned.
- (iii) If he had been reinstated he would have earned salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually not only beyond the date of superannuation, for his life time (if he lives longer) but even his heirs would get it in perpetuity after his demise.
- (iv) The corpus of lumpsum compensation would remain intact, in any event."

The workman has put in more than 25 years of service and today he is in the verge of retirement. He has been without employment for the last 10 years. Dismissal is the extreme punishment which cause economic death of the concerned workman. In the above circumstances, considering the long record of the service of the workman and his family circumstances, I hold that compensation equivalent to 3 1/2 years salary (including allowances) as admissible on the basis of the last pay and allowances should be a reasonable amount to reward in lieu of reinstatement. I hold that the extreme penalty of dismissal is not justifiable and compensation as mentioned above is reasonable and should be paid to the workman instead of dismissal.

In the result, award passed holding that the extreme penalty of dismissal awarded to petitioner-workman is not justified and management is directed to pay a compensation equivalent to 3 1/2 years salary (including allowances) as admissible on the basis of the last pay and allowances drawn. No costs.

Dated, this the 19th day of November 1997.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

FOR PETITIONER :

None.

FOR RESPONDENT :

MW-1—Thiru Gowthaman.

DOCUMENTS MARKED

For Petitioner/workman :

- Ex. W-1/22-9-87—Charge sheet issued to workman (Xerox copy)
- Ex. W-2/22-9-87—Enquiry notice sent to workman (Xerox copy)
- Ex. W-3/30-9-87—Letter showing appointment of enquiry officer (Xerox copy).
- Ex. W-4/3-11-87—Second show cause notice sent to workman (Xerox copy)

Ex. W-5/19-11-87—Order of dismissal issued to workman (Xerox copy)

Ex. W-6/5-1-88—Order of Appellate Authority dismissing the appeal of petitioner-workman (Xerox copy).

For Respondent-management :

- Ex. M-1/30-9-87—Enquiry Proceedings.
- Ex. M-2/3-11-87—Findings of the Enquiry Officer.
- Ex. M-3/22-9-87—Complaint given to management regarding misconduct committed by workman.
- Ex. M-4/22-9-87—Inter office memo. Certificate given by doctor regarding petitioner.
- Ex. M-5/22-9-87—Reply given by employee to the respondent.
- Ex. M-6/22-9-87—Letter from petitioner-workman to the respondent.
- Ex. M-7/29-9-87—Letter from workman to the respondent-management to adjourn the enquiry.
- Ex. M-8/16-11-87—Explanation given by the petitioner-workman.
- Ex. M-9—Standing Orders of the respondent Corporation.
- Ex. M-10/16-11-87—Records relating to past record of the employee.
- Ex. M-11/16-11-87—Records relating to past record of the employee.

नई दिल्ली, 22 दिसम्बर, 1997

का.प्र. 157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इन्टरनेशनल एयरपोर्ट्स अथॉरिटी ऑफ इंडिया के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-97 को प्राप्त हुआ था।

[सं एल-11012/15/91-आई आर (विविध)
के. वी. बी. उन्नी, डेस्क अधिकारी]

New Delhi, the 22nd December, 1997

S.O. 157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India and their workman, which was received by the Central Government on the 22-12-97.

[No. L-11012/15/91-IR(Misc)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Friday, the 21st day of November, 1997

Present :—

THIRU S. ASHOK KUMAR, M.Sc., B.L.,
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE No. 64 of 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of International Airports Authority of India, Madras).

Between

The workmen represented by
Shri K. Ramadurai,
5-J, Vijaya Garden,
Srinivasa Nagar,
Perungalathur,
Madras-63.

and

The Director,
International Airport Authority of India,
Meenambakkam, Madras-600 027.

REFERENCE : Order No. L-11012/15/91-IR(Misc),
Ministry of Labour, dated 28-1-92, Govt. of India,
New Delhi.

This dispute coming on for final hearing on Wednesday, the 5th day of November 1997, upon pursuing the Reference claim, counter statements and all other material papers on record, upon hearing the arguments of TV1. T.Fenn Walter, W. Fedrick Castro, Authorised Representatives for workman, and of Thiru K.J. Jawahar & Vaishali Jawahar, Advocates appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following:

AWARD

This reference has been made for adjudication of the following issue:

“Whether the termination of service of Shri K. Ramadurai, Beldar by the management of International Airports Authority of India Madras justified? If not, to what relief he is entitled?”

2. On service of notices, both the petitioner and the management appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows:

The petitioner entered service under the respondent on 6-11-78 as Beldar and worked in various capacities under the respondent. After his marriage, the petitioner had to face various family problems and hence he was compelled to be on leave of absence from 23-12-87. The petitioner has sent number of leave letters and medical certificates, to the respondent. But the respondent has never

considered any of them and never agreed to reply to any of his letters. On the contrary, the petitioner was abruptly issued with an order dated 6-2-89 stating that the petitioner has abandoned his service and he is deemed to have abandoned his job and his name has been struck off from the rolls of the respondent. If the petitioner was given an opportunity by way of enquiry conducted by the respondent, the petitioner could have easily explained the reasons which are highly acceptable. Contrary to the normal course of action to be taken by the respondent, the respondent has straightaway jumped into erroneous conclusions, that the petitioner has abandoned his job. Abandonment is a misconduct and respondent is bound to issue a charge and hold an enquiry and take further proceedings in accordance with law. But the respondent has failed to follow any of the procedures contemplated under law. The request of the petitioner for reinstatement also has not been considered. Petitioner has no other job and since he has been deprived of his job his entire family members are put into extreme hardship and sufferings. Even if the petitioner is deemed to have abandoned his job and in the event of management striking out his name from the rolls which will amount to retrenchment in contravention of Sec. 25F of the I.D Act, 1947. He has not been issued with any notice of retrenchment and no retrenchment compensation has been offered or tendered till date. The petitioner was drawing a salary of Rs. 1600/-p.m. finally and his termination from service is unjust and improper and illegal. The petitioner raised Industrial dispute before the Conciliation Officer under Sec. 1 of 2(a) of the Industrial Disputes Act, 1947 and no settlement was arrived at in the course of conciliation. The petitioner prays to direct the respondent management to reinstate the petitioner with continuity of service, backwages and other attendant benefits.

4. The main averments found in the counter statement filed by the respondent are as follows:

The petitioner entered into service of the respondent as Beldar on 6-11-78. The averments that the petitioner had to face various problems and he was compelled to be on leave are untrue and contrary to the facts of the case. The petitioner has remained absent from duty on several occasions without prior permission or intimation and in spite of repeated warnings, and letters to join duty, he failed and neglected either to reply or to join duty. The allegation that the respondent never considered his leave letters and medical certificates is utterly false and contrary to facts. Only after repeated letters and warnings from the respondent to join duty, the petitioner would submit the

leave application/medical certificate obtained from different medical practitioners and at times with different diagnosis. For instance in the medical certificate dated 15-8-87 obtained by the petitioner from Dr. Ramanmurthy of Nanganallur Ailment has been diagnosed as Haemolytic and Jaundice whereas in the medical certificate dated 16-9-87 obtained from Dr. Mrs. Nirmala, of Anuradha Nursing Home, Chrompet, the ailment was stated as Infective Hepatitis. Further, he was found to be physically fit to join duty from 17-9-87 by Dr. Mrs. Nirmala through a medical certificate issued by her on 16-9-87. But the petitioner chose to remain absent and failed and neglected duty till 16-12-87. Even though the petitioner was resident of Peungalathur, medical certificates and treatments were obtained from faraway places. The details of absenteeism from 1986 are given below:

Period of absence	No. of days	Date of submission of application
11-12-86 to 31-12-86	21	7-1-87
1-1-87 to 3-1-87	3	
4-1-87 to 6-1-87	3	
10-1-87 to 21-2-87	43	23-2-87
27-2-87 to 24-3-87	26	25-3-87
16-5-87 to 16-12-87	214	17-12-87

The petitioner was unauthorisedly absent without intimation or permission for a total period of 214 days, necessitating serious and stringent action on the part of the respondent in accordance with the regulations applicable in the regard. The averments made by the petitioner that he was abruptly issued with an order dated 6-2-89 stating that the petitioner has abandoned his service and he is deemed to have abandoned his job and his name has been struck off from the rolls is only partially correct. The respondent denies that the said order was issued abruptly and without furnishing reasonable opportunities to the petitioner. The respondent denies that the respondent failed to give reasonable opportunity to show cause or to explain reasons for the unauthorised absence of the petitioner and also the violation of normal course of conducting an enquiry. The respondent denies that abandonment of job is a misconduct as per the rules and regulations of International Airport Authority of India, enacted from time to time. The respondent denies that is bound to issue a charge sheet and hold an enquiry as per law. The respondent has followed scrupulously and complied with all the procedures contemplated under law as laid down in IAAI Personnel Administrative Manual Part-I General and IAAI

General Conditions of Service Regulations 1980 and other connected regulations applicable. as per Section 6, Clause 2 of Regulation 31, if an employee remains absent without any intimation/prior permission for a period of two months he will be deemed to have abandoned his job and his services will be terminated without any notice. In spite of the above regulation, out of courtesy and humanitarian outlook, respondent did not resort to any hasty action as such. But liberally provided ample opportunity to improve his attendance and conduct as is evident from the various memorandum issued from 20-3-87 to 30-5-88. The respondent has given not one but several opportunities to the petitioner to improve his performance and to comply with rules and regulations. He was also provided an opportunity of being heard including on 18-11-87 by a team of officials, who visited his residence, ascertained the facts but despite his promises that he would report to duty from then onwards he has failed to comply with regulations directives and other memorandums. Vexed with the attitude displayed by the petitioner in the consistency of his wilful absence and default, the respondent finally issued a show cause notice by a memorandum dated 12-12-87 directing the petitioner to show cause as to why his services would not be terminated for his wilful absence. There was no reply from the petitioner. The respondent has provided some more opportunities by sending another memorandum dated 18-4-88 asking the petitioner to report to duty but all such efforts, opportunities shown by the respondent proved to be futile and in vain. The petitioner on his own conduct and negligence, failure and default on his part and by his wilful absence unauthorisedly without prior permission or intimation for long span of time has virtually abandoned the job without any justification and rendered himself liable for termination from service. The allegation that the respondent has acted arbitrarily is not true. On the other hand, the respondent has acted fairly, reasonably and complied with all the procedural requirements in awarding termination. The respondent has not prevented the petitioner from either joining duty or from availing the opportunities by saying reasonable or sufficient cause for his absence. Termination of service by the respondents will not amount to retrenchment as contemplated by the I.D. Act, 1947 and the respondent is not bound to follow the procedure U/S. 25F of the I.D. Act. The petitioner who has absented himself for long span of time followed by his abandonment of his job on his part and his own accord cannot classify the termination as retrenchment. The petitioner is not entitled to any claim or any relief much less retrenchment compensation. The claim

of the petitioner for reinstatement into service with continuity of service, backwages and other attendant benefits is not sustainable either in the facts or under Law. The claim of the petitioner is not bonafide. Hence the petition may be dismissed with costs.

5. On behalf of the petitioner the petitioner has been examined as WWI and Exs. W-1 to W-6/series have been marked. On behalf of the respondent MWI has been examined and Exs. M.1 to M.13 have been marked.

6. The Point for our consideration is : Whether the termination of service of the petitioner is justifiable ? If not to what relief the petitioner is entitled to?"

7. The Point : The petitioner K. Ramadurai was employed in the respondent management from 6-11-78. Prior to the termination of service, the petitioner is said to have been on long leave or unauthorised absence and in spite of several memorandums sent by the respondent management, the petitioner did not join duty and therefore, the respondent management, has considered his absence as abandonment of job and terminated him from service.

8. The contention of the petitioner is that from 23.12.87 till June 1988, the petitioner has sent necessary Medical Certificates, issued by Government Doctors, which have neither been rejected nor any letter was communicated to the petitioner stating that his leave applications are not accepted, and after obtaining the certificate of fitness when the petitioner wanted to join duty, he was prevented from joining duty and without framing any charge for the alleged unauthorised absence which is said to have amounted to abandonment of job he was terminated from service. Respondent has not framed any charge and did not conduct any enquiry and thus denied reasonable opportunity to show the reasons for the absence of the petitioner. In support of his contention, the petitioner relies upon Exs. W-1 to W-4 medical certificates and Ex. W-5 certificate of fitness and Ex.W-6/series Certificate of Posting.

9. The contention of the respondent management is that the petitioner was in the habit of absenting himself without authorisation and without medical certificates and in spite of several memorandums, the petitioner failed to join duty and therefore according to the IAAI service Regulations and IAAI Leave Regulations the petitioner was considered to have abandoned his job and his name was struck off from the rolls of the respondent. In support of their contention, the management relies upon memorandum dated 19.3.87, 29.4.87, 25.8.87, 3.11.87, 12.12.87 and telegram dated 7.8.87 which

have been marked as Exs. M.1, M.2, M.4, M.6, M.7 and M.3 respectively. The office order terminating the petitioner from service is Ex.M.10. Regulation No.-31 of Sec.4 of IAAI General Conditions of Regulations of Service is marked as Ex.M.12 and Regulation 3 of Leave regulations 1983 is marked as Ex.M.13.

10. Whether the petitioner absented himself without sufficient cause and the absence of the petitioner amounts to abandonment of job and whether the respondent is justified in striking off the name of the petitioner from its rolls without conducting any enquiry are matters to be decided. When duly cross-examined, MWI has categorically admitted that Exs.W-1 to W-5 are medical certificates sent by the petitioner covering the period from 23.12.87 to 16.6.88 sent to their office and the address mentioned in Ex.W-6/series belongs to his office. He has further admitted that the management has not sent any communication to the petitioner that the medical certificates sent by him are rejected. MWI Thiru Sunit Kishore Sarang (Assistant Manager), personal has also admitted that the petitioner's leave records are in their office and that the leave records will show whether the leave was sanctioned or not and he has denied suggestions that the leave taken by him was sanctioned and without considering his case he was terminated from service. The said MWI has also admitted that from 23.12.87 to 6.2.89 petitioner was absent and prior to 23.12.87, all the leaves taken by the petitioner have been regularised. Exs. M.1, M.2, M.4, M.6, M.7, and M.3 the memorandums and telegram sent by the respondent to the petitioner are prior to 23.12.87. According to MWI leave taken by the petitioner prior to 23.12.87 has been regularised. In the course of arguments, when this Tribunal told the learned counsel for the respondent that the above documents related to the period for which the leave has been regularised and that they are not necessary for this dispute, the learned counsel for the respondent agreed it as correct. Now we have to consider whether the absence of the petitioner after 23.12.87. is unauthorised amounting to abandonment of job and whether the management has acted fairly, affording reasonable opportunity to the petitioner by adopting the principles of natural justice. Exs.W-1 to W-4 are Medical Certificates issued by the competent authorities for illness of the petitioner which have been properly sent to the respondent as is found from Ex.W-6/series, Certificate of posting. Ex.-W-5 dated 16.6.88 is the fitness certificate issued by competent authority. On 18.6.88, when the petitioner reported for duty, an officer of the respondent

by name Kannan is said to have prevented the petitioner from joining duty. The receipt of these medical certificates has been admitted by MW1. The leave records of the petitioner have not been produced before this Court by the respondent and therefore we are not able to find out whether the above leaves were sanctioned by the respondent. However, the fact remains that the respondent has not sent any letter after 23-12-87 to the petitioner rejecting his leave on medical grounds. As already stated, Ex.M.1, M.2, M.3, M.4, M.6 and M.7 are memorandums and telegrams which were issued prior to 23-12-87. In the counter statement, the respondent has stated that the petitioner was sending false medical certificates by comparing the diagnosis of Dr. Ramamurthy in his certificate dated 15-8-87 and the certificates dated 16-9-87 issued by Dr. Nirmala. In fact both the above certificates mention the same disease in the earlier certificate, the disease is mentioned as Jaundice whereas in the later certificate the medical term of Jaundice is mentioned as "Infective Hepatitis". Therefore, the contention of the respondent that the petitioner produced false certificate with different diagnosis within a period of one month is not correct. However, the period of absence of about 214 days as contended by the respondent is prior to 23-12-87 which has been already regularised by the respondent. Whether the respondent sanctioned leave from 23-12-87 till June 1988 or rejected his leave application has to be proved by the respondent management. In spite of the records available with the respondent-management, the respondent has not produced leave sanction orders or registers maintained for this purpose. Ex.M.8, a memorandum said to have been sent by the respondent and Ex M-9 a memorandum dated 25-5-88 issued by the respondent are within the period covered under the medical certificate sent by the petitioner. Further there is no proof that Ex.M.8 and M.9, memorandums were received by the petitioner. After 23-12-87 no communication has been sent to the petitioner by the respondent rejecting his leave application. The petitioner has categorically stated that when he reported for duty, he was denied duty.

11. The management contends that under Regulation 31 Section 4 of IAAI General Conditions of Service Regulations 1980 and Regulation No. 3 of IAAI Leave Regulations 1983, the petitioner has been deemed to have abandoned his job and therefore, his name has been removed from the rolls of the respondent. The said rules are extracted hereunder:

REGULATION 31 of SECTION IV OF IAAI (General Conditions of Service) Regulation 1980

31. Treatment of unauthorised absence: (1) An employee who is absent from duty without any authority, shall not be entitled to the pay and allowances during the period for such absence. The unauthorised absence of this kind, apart from resulting in loss of pay any allowances for the period of such absence would also constitute a break in service, entailing for feature of past service, unless the break itself is condoned and treated as *dias non*. If the break is condoned and treated *dias non* by the competent authority, the service rendered prior to unauthorised absence will be counted for all purposes, but the period of break itself will not count for any purpose.

(ii) The consequences of unauthorised absence from duty which is not condoned in any manner would be as follows:

(i) Pay and allowances: No pay and allowances are admissible during the period of unauthorised absence.

(ii) The period of such an authorised absence would not count for increment.

(iii) Leave : The period of unauthorised absence would not count for earned leave.

(iv) GPF & Gratuity : The period of unauthorised absence would be ignored for the purposes of entitlement of CPF benefits. The interruption in service caused by unauthorised absence, would entitle forfeiture of past service for purpose of entitlement to Gratuity.

(v) The unauthorised absence of an employee would result in the lapse of the previous service, service benefits, like LTC., etc. to which employees are entitled to only after they put in a specified length of continuous service or certain amount of minimum continuous service. Due to unauthorised absence an employee shall be required to put in a minimum of specified length of continuous service of certain amount of minimum continuous service. Due to unauthorised absence an employee shall be required to put in a minimum of specified length of continuous service after the unauthorised absence for entitlement of such concessions.

(vi) If an employee remains absent without any intimation prior permission, for a period of two months, he will be deemed to have abandoned his job and the services will be terminated without any notice.

Regulation 3 of IAAI (Leave) Regulation 1983

3. Right to Leave

1. Leave cannot be claimed as of right.

2. When the exigencies of service so require, leave of any kind may be refused or revoked by the competent authority but it shall not be open to the authority to alter the kind of leave due and applied for by the employee except at the written request of the employee.

3. Except in emergency application for leave for 3 days or more on grounds other than medical grounds shall be made atleast 7 days before the date from which the leave is required.

4. An employee before proceeding on leave shall furnish in the application address during the period of leave. However, in cases where it is not possible to indicate address reasons for not doing so shall be explained by the employee, in the leave application and the leave sanctioning authority is satisfied itself before granting leave.

5. An employee who has been sanctioned leave or on extension of leave on medical grounds shall not resume duty unless he produces a "Fitness Certificate" from an authorised Medical Officer.

The respondent relies upon Clause VI of Regulation 31 of Sec. 4 of IAAI Regulation 1980 wherein it is mentioned as follows:

"If an employee remains absent without any intimation/prior permission for a period of two months, he will be deemed to have abandoned his job and his services will be terminated without any notice."

This clause is not applicable to the petitioner's case. He has sent for medical certificates requesting medical leave from 23-12-87 to June 1988. Therefore, it cannot be held that the petitioner remained absent without any intimation. Therefore, the rule marked as Ex.M.12 is not applicable to the case of the petitioner. The respondent further depends upon Ex.M.13 Regulation 3 of IAAI (Leave Regulations) 1983 wherein it is mentioned that leave cannot be claimed as of right and except on grounds other than medical grounds application for leave should be made atleast 7 days before the date on which the leave is required. That means the employee who prays for leave on medical grounds need not send for application for leave seven days before the date from which the leave is required. Further, under Clause 5, if an employee avails leave on medical grounds, can resume duty only after producing a fitness certificate from an authorised Medical Officer. In this case, the petitioner has produced Ex.W-5, Fitness certificate issued by an authorised Medical

Officer. Even after producing Ex.W-5 fitness certificate the petitioner has not been permitted to join duty. Therefore, the contention of management that it relied upon Ex.M.12 and Ex.M.13 Regulations and leave rules in passing order of termination of service is not correct.

12. Before passing final order on 6-2-89 respondent management has not framed any charge against the petitioner and has not given any opportunity to represent before the management and offer his explanation of causes which made him to remain absent which may be acceptable to the respondent. Without giving an opportunity to the petitioner to show cause against the proposed action against him, the respondent management has passed an order striking off his name from the rolls. In this connection, the decision of the Hon'ble Apex Court, in D.K. YADAV Vs. J.M.A. INDUSTRIES LTD., (1990 II LLJ P 696) may be used to arrive at a right decision.

"Therefore, fairplay in action requires the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principle of natural justice. Art. 21 clubs life with liberty dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and procedural justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allegic to discriminatory dictates. Equality is the anthesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable. In Delhi Transport Corpn. Vs. D.T.C. Mazdoor Congress AIR 1991 SC 101 = 1991 I LLJ 395 this Court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Art. 309 of the Constitution of the Statutory provisions of the rules, regulations, or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Art. 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful oppressive or at vagary. The principles of natural justice is an integral part of the guarantee of equality assured by Art. 14 any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential in-built of natural justice. Art. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the effect thereof is the end result.

It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would

include right to livelihood. The order of termination of service of an employee/workman, visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependants. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. Vs; D.T.C; Mazdoor Congress (supra)* the Constitution Bench, per majority, held that termination of the service, of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employee was set aside. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 1980 on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. (13) of the Certified Standing Order to terminate the services of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 2(13)(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Art. 14. When so read the impugned action is violative of the principles of natural justice. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice."

In the above case, the concerned workman was continuously absent for more than 8 days without leave or prior information/intimation or previous permission from the management. Without resorting to any enquiry, the management has struck his name from the rolls and the Hon'ble Apex Court has also considered it to be a retrenchment defined u/s. 2(oo) of the I.D. Act, 1947. In the same case, further it has been held as:

"Section 2(oo) of the Act defines "Retrenchment" which means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :—

- (a) Voluntary retirement of the workman or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill health.

Section 25F prescribes mandatory procedure to be followed before the retrenchment becomes valid and legal and violation thereof visits with invalidation of the action with consequential results.

In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh, 1990 H LLJ 70* the Constitution Bench considered the scope of the word "retrenchment" defined by S 2(oo) and held in para 71 at page 91 that "analysing the definition of retrenchment in S. 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in Cls. (a) and (b) namely, voluntary retirement and retirement on reaching the stipulated age of retirement or on the grounds of continued ill health. There would be no violational element of the employer. Their express exclusion implies that those would otherwise have been in-

cluded in para 77 at page 94 it was further held that "right of the employer and the contract of employment has been affected by introducing S. 2 (oo)". The contention of the management to terminate the service of an employee under the Certified Standing Orders and under the Contracts of employment was negatived, holding that the right of the management has been affected by introduction of S. 2(oo) and S. 25F of the Act. The second view was that the right as such has not been affected or taken away, but only an additional social obligation has been imposed on the employer to abide by the mandate of S. 25F of the Act to tide over the financial difficulty which subserves the social policy. This Court relied on the maxim—*Stat Pro ratione voluntas populi*, the will of the people stands in place of a reason. In paragraph 82 page 95 this Court concluded that the definition in S. 2(oo) of the Act of retrenchment means, "the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section." Same view was taken by three Benches of three Judges of this Court in *State Bank of India Vs. N. Sundara Mani 1976 I LLJ 478, Delhi Cloth & General Mills Ltd., Vs. Shambu Nath Mukherjee, 1978 II LLJ 1 and Hindustan Steel Ltd., Vs. Presiding Officer, Labour Court 1977 I LLJ 1* and two Benches of two judges in *Robert D' Souza Vs. Executive Engineer, Southern Railway 1982 I LLJ 330 and H. D. Singh Vs. Reserve Bank of India (AIR 1986 SC 132)* took the same view. Therefore, we find force in the contention of Sri R.K. Jain, the learned Senior Counsel for the appellant, that the definition "retrenchment" in S. 2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employer for any reason whatsoever." His contention that expiry of eight days' absence from duty brings automatic loss of lien on the post and nothing more need be done by the management to pass an order terminating the service and per force termination is automatic, bears no substance. The Constitution bench specifically held that the right of the employer given under the Standing Orders gets affected by statutory operation. In *Robert D' Souza's case (supra)* this Court rejected the contention that on expiry of leave the termination of service is automatic and nothing further could be done. It was further held that striking off the name from the rolls for unauthorised absence from duty mounted to termination of service and absence from duty for 8 consecutive days amounts to misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. In *Shambunath's case (supra)* three Judges Bench held that striking off the name of the workman for absence of leave itself amounted to retrenchment. In *H. D. Singh Vs. Reserve Bank of India (supra)*, this Court held that striking off the name from the rolls amounts to an arbitrary action. In *State Bank of India Vs. Workmen of State Bank of India 1990 II LLJ 586* a two Judges Bench of this Court to which one of us, K.R.S.J. was a member was to consider the effect of discharge one month's notice pay in lieu thereof. It was held that it was not a discharge simpliciter or a simple termination of service but one camouflaged for serious misconduct. This Court lifted the veil and looked beyond the apparent tenor of order and its effect. It was held that the action was not valid in law."

In 1997 I LLJ P-241, the High Court of Rajasthan in *OSWALD S. JOSEPH Vs. RAJASTHAN STATE ROAD TRANSPORT CORPORATION & ORS. (1997 I LLJ P 241)* at page 253, has held as follows :

"We need not go into the question as to whether or not there was a full fledged domestic enquiry worth the name or there was a sham enquiry violating the principles of natural justice and fair play but it is manifest enough from the facts and circumstances

of the case that it was a single act of continued absence on the part of the writ petitioner where he, from time to time, went on writing different letters to his employer, praying for leave and/or extension thereof and the factum of receipt of such letter which came after the other, by way of series of correspondence, was never denied by the management. Even though, technically, it could be construed to be a misconduct within the frame work of the Standing Orders, we are of the considered view that the punishment of removal from service though taken in the background of a formal disciplinary proceeding against the writ petitioner, is really shockingly disproportionate.

We think that there not having been a proper application of mind by the Disciplinary Authority as regards the choice of penalty having appeared to us to be shocking to conscience, it was a fit case where the punishment was liable to be struck down. Instead of remitting the matter back to the Disciplinary Authority, we think it was to take up on ourselves the task of imposing an appropriate penalty in accordance with law and we think penalty of stoppage of annual grade increments for three years with cumulative effect and reinstatement of appellant into service without any backwages, would meet the ends of justice. We would direct reinstatement of the writ petitioner applicant with immediate effect, within a fortnight thereof."

As far as the petitioner is concerned the respondent has not framed any charge against the petitioner for his absenteeism and no domestic enquiry was conducted against him. The petitioner has been denied any opportunity of explaining the cause for his leave. That the petitioner was regularly sending medical certificates from 23-12-87 to June 1988 (marked as Exs. W-1 to W. 4) has been received by the management and admitted by them. That the petitioner was in the habit of taking leave very often prior to 23-12-87 is also not denied by the petitioner. There is no proof for having sent two memorandums dated 31-3-88, Ex. M. 8 and 25/30-5-88, Ex. M. 9 or being received by the petitioner. Even assuming that these two memorandums are received by the petitioner, they are within the period covered under the medical certificates. The memorandums do not speak whether the medical certificates submitted by the petitioner having been accepted or rejected. In the above circumstances it has to be held that the respondent management has terminated the services of the petitioner without affording him sufficient opportunity to explain his cause. As already mentioned in the judgement of the Hon'ble Apex Court, termination of service for any reason whatsoever except the reasons mentioned in Sec. 2(oo) of the I.D. Act, 1947 will amount to retrenchment. No notice or compensation has been paid to the petitioner. Therefore, it is a clear case of violation of Sec. 25F of the I.D. Act, 1947. Punishment of termination from service is also shockingly disproportionate.

13. In the above circumstances, ends of justice would be met with by passing an award directing the respondent to reinstate the petitioner forthwith with 50 percent of backwages and other attendant benefits.

14. In the result, award is passed holding that the termination of service of Sh. K. Ramadurai, Beldar is not justified and the respondent is directed to reinstate the petitioner forthwith with 50 percent of backwages and all other attendant benefits. No costs.

Dated, this the 21st day of November 1997.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner/workman :

W.W. 1 : Thiru K. Ramadurai.

For Management :

M.W. 1 : L. Thiru Srin't Kishore Soreng.

DOCUMENTS MARKED

For Petitioner/workman :

Ex. W-1/23-12-87 : Medical Certificate issued by Dr. S. Ramaswamy (xerox copy).

W-2/1-1-88 : —do—

W-3/1-3-88 : —do—

W-4/1-5-88 : —do—

W-5/16-6-88 : Certificate of fitness issued by Dr. S. Ramaswamy (xerox copy).

W-6/series : Xerox copy of Certificate of postings sent by petitioner (6 numbers).

For Respondent/Management :

Ex. M. 1/19-3-87 : Memorandum No. AAM/Pers/PF/KR 10243.45 issued to petitioner (xerox copy)

M 2/23/29-4-87 : Memorandum No. AAM/Pers/PF/KR 14196.98 —do—

M. 3/7-8-87 : Xerox copy of telegram sent to the petitioner by respondent.

M-4/24/25-8-87 : Memorandum AAM/Pers/PF/KR 35811-12 issued to petitioner (xerox copy)

M-5/26-8-87 : Acknowledgement card signed by petitioner (xerox copy)

M-6/3-11-87 : Memorandum AAM/Pers PF/KR 50456-57 issued to petitioner (xerox copy)

M-7/12-12-87 : Memorandum AAM/PERS/ENGO BELDAR/2/KR/59085 issued to petitioner (xerox copy)

M-8/31-3-89 : Acknowledgement. (xerox copy)

M. 9/25-5-88 : Memorandum (xerox copy)

M-10/6-2-89 : Office Order (Striking off petitioner's name from rolls) (xerox copy)

M. 11] : Acknowledgement. (xerox copy)

M. 12] : IAAI Service Regulations (xerox copy)

M. 13] : IAAI Leave Regulations. (xerox copy)

नई दिल्ली, 23. दिसम्बर, 1942

का आ -158-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता टेलीफोन, कलकत्ता के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-97 को प्राप्त हुआ था।

[सं एल-40012/200/95-आईआर (डी यू)]

के. जी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Telephone, Calcutta and their workman, which was received by the Central Government on 23-12-97.

[No. L-40012/200/95-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

New Delhi, the 24th December, 1997

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 26 of 1997

PARTIES :

Employers in relation to the management of Calcutta Telephone.

AND

Their Workman

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer

APPEARANCE :

On behalf of Management.—Mr. Tapas Chowdhury, Advocate.

On behalf of Workman.—None.

STATE : West Bengal.

INDUSTRY : Telephone.

AWARD

By Order No. L-40012/200/95-IR(DU) dated 10th July, 1997 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of Calcutta Telephone not giving employment to Shri Madan Mohan Saha from 3rd February, 1989 is justified? If not, what relief the workman is entitled to "

2. When the case is called out today, none appears for the workmen even though the management is represented by Mr. Tapas Chowdhury, learned Advocate. It appears from the record that on three consecutive dates the workman has filed to file written statement and so step was also taken by the workman in the matter. It is therefore clear that the workman is no longer interested in the matter.

3. In the aforesaid circumstances, in the absence of any material on record for any decision of the issue under reference, this Tribunal has no other alternative but to pass a "No Dispute" Award in this case.

4. A "No Dispute" Award is accordingly passed and the reference is disposed of.

This is my Award.

Dated, Calcutta.

The 8th December, 1997.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 1997

का.आ. 159—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तमिलनाडु मिनरल्स लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद से औद्योगिक अधिकरण, मद्रास, के पंचपट जो प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-97 को प्राप्त हुआ था।

[सं. एन-29012/44/88-डी-III(बी)]

के.वी.बी. उष्णी, डेस्क अधिकारी

S.O. 159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tamil Nadu Minerals Ltd., and their workman, which was received by the Central Government on the 24-12-97.

[No. L-29012 '44/88-D-III(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU

MADRAS

Tuesday, the 25th day of November, 1997

Present :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal,
INDUSTRIAL DISPUTE NO. 33/1989

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of M/s. Tamil Nadu Minerals Ltd., Ariyalur).

BETWEEN

The workmen represented by
The General Secretary,
Tamilnadu National Mine Workers Union,
No. 57-C, Court Street, Ariyalur-621 704.

AND

The Management,
M/s. Tamilnadu Minerals Ltd.,
Ariyalur-621 704.

Reference :

Order No. L-29012/44/88-D.III(B), Ministry of Labour,
dated 16-3-89, Govt. of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 12th of November 1997, upon perusing the Reference claim statement, counter and all other material papers on record, upon hearing the arguments of Tvl. K. Chandru and D. Nagasala, Advocates appearing for the petitioner union and Thiru R. Viduthalai, Advocate appearing for the respondent-management and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of M/s. Tamil Nadu Minerals Ltd., Ariyalur in discharging Shri V. Bhooraswamy, NMR Worker from service with effect from 15-10-1987 is justified? If not, what relief is the workman entitled to?"

2. The main averments found in the claim statement filed by the petitioner union are as follows :

Thiru V. Bhooraswamy, a member of the petitioner-union was working in the respondent mines as Stone Breaker. The workman was sent for medical examination by the Medical Board at the Government Headquarters Hospital, Tiruchirapalli. The workman was sent for medical check-up in a routine manner, as per the Mines Act and Mines Rules framed under. The medical board found the concerned workman unfit by a certificate dated 21-10-1986. Even after the said certificate was given, the workman was not discharged from the

employment by the respondent and was continued to be employed by the respondent. For reasons best known to the respondent, the workman was terminated w.e.f. 15-10-87. Because of this reason, the workman was again sent for medical check-up by the petitioner union before the same board and asked them to have a fresh checkup on the health of the worker vide its letter dated 12-10-87. The petitioner-union also sent a letter to the respondent dated 13-10-87 requesting to comply with the rule 29(M) of the Mines Rules. The petitioner-union got the worker examined by a medical specialist attached to the Government Headquarters Hospital, and who himself was a member of the Medical Board at Trichy. The said Doctor (who is a heart specialist) found the workman not having any such ailment. The workman got admitted to the Govt. Headquarters Hospital at Dindigul on 13-10-87 and got discharged on 16-10-87 and the doctor there also found that he did not have any ailment. The workman also underwent scanning test which conclusively proved that he had no heart ailment at all. A representation dated 17-10-87, enclosing the certificate was sent by the petitioner union to the respondent. When no reply was received a dispute was raised by the petitioner-union before Assistant Commissioner of Labour (Central), by its letter dated 6-11-1987. The respondent submitted their remarks on 15-12-87. Rejoinder dated 29-3-1988 was submitted by the petitioner union and further rejoinder dated 25-7-88, was also submitted. As the conciliation officer could not bring about any mediation, a failure report dated 1-12-88 was sent to the Government of India which upon the receipt of the same, referred the issue for adjudication. The termination of the service of the workman is wholly illegal, unjust and liable to be interfered by this Court. The termination order is arbitrary and violative of Art. 14 of the Constitution. The termination is also contrary to the provisions of the Mines Act, and the Mines Rules. The action of the respondent in having obtained a certificate for medical unfitness as early as 21-10-86 on the ground of acute heart problem, and continued to employ the workman upto 15-10-87, in stone breaking which involves hard exertions would show that the medical unfitness was not a genuine one. The action of the respondent in not accepting medical certificates obtained from specialist doctors during the period in which the workman was still retained in service would clearly show the ulterior motive on the part of the respondent. The respondent ought to have obtained fresh medical certificate as on October 1987 and therefore any reliance placed upon the earlier certificate (which itself was not given effect) by the respondent would serve no purpose. The discharge of the concerned workman is also contrary to Sec. 25F and 25N of the I.D. Act, and the discharge order is nullo in law. Hence it is prayed to pass an award holding that the discharge of workman is not justified and direct the respondent, to reinstate the workman, with backwages, continuity of service and other attendant benefits with costs.

4. The main averments found in the counter statement are as follows :

The petition filed as such by the petitioner is not maintainable either in law or facts. The petitioner has no right to represent the worker. The worker V. Bhorouswamy was a non-muster roll worker at Peria Navalur Limestone Mines of the respondent Tamil Nadu Minerals Ltd. He was relieved of his duty on the strength of medical unfitness report issued by the District Medical Board constituted by the District Medical Officer, Trichy. He was examined by the Medical board on 21-10-86. The management received the medical report in prescribed form 'O' from the Board on 15-7-87. Copy of the report was issued to the concerned worker on 10-9-87. A notice discharging the individual worker from service was given on 29-9-87 with 15 days notice time and he was relieved from service on 15-10-87. According to the medical report, the

which means that a valve in the heart is not functioning properly and the incoming uncleaned blood is mixed with the cleaned blood going out of heart. The valve disfunctioning could not be cured and it is born-defect and permanent disability in circulation systems of the body. The mixing of bad blood with clean blood has resulted in the enlargement of liver. Engaging him in any kind of physical hard work would cause more damage to cardio vascular systems. The Tamil Nadu National Mine Workers Union earlier to the petition had suggested to comply with the rule 29M of the Mines Rules 1955. Rule 29M of Mines Rules is that as a result of medical examination if a person has been declared unfit for employment in mines or in a particular category of mines, or in any specified operation mines, he shall not be employed or continue to be employed in mine or in the category of mine or in the specified operation after the expiry of thirty days from the date of his medical examination unless he has filed an appeal under Sub-Rule (1) of rule 29J against the said declaration. Sub-rule (1) of Rule 29J says that as a result of a medical examination a person has been declared unfit for employment in mines or in a particular category of mine, or in any specified operations in mine, he may within 30 days of the receipt by him of a copy of the Certificate, file an appeal with the manager of the mine against the declaration aforesaid, and request for a medical re-examination by an Appellate Medical Board constituted under Rule 29K. In case of the workman, the copy of the report of medical examination was issued on 10-9-87. There was no appeal from the workman against the declaration of the report and he has not requested for a medical re-examination within 30 days of the receipt of medical report was required by Sub-Rule (1) of 29J. Hence the request of the petitioner-union could not be considered for re-medical examination. The matter ought to have been agitated by the individual within the time limit prescribed. Under Rule 12m any workman who during the course of his employment is found to medically unfit for work by any medical officer authorised by the company, shall be liable for termination. If the workman is aggrieved by the finding of the medical officer his case may be referred either to a medical board or to the District Medical Officer whose decision shall be final and binding on the parties. The workman was not denied of any benefits subsequent to the events that took place. Under such circumstances, there could be no grievances against the respondent. As per Sec. 29M of the Mines Rules, the respondent could not have the said worker on rolls when the Board has found that he is suffering from Aortic Valvular Disease and the said medical examination report conducted under Rule 29(B) has clearly indicated that he is medically unfit from any employment in mine. His employment as a Stone Breaker requires an arduous nature of work. The liver has been seen as enlarged. The opinion of the medical board has been indicated in Col. 13 to the extent that the "physical exertion will cause more damage for Cardio Vascular System. "In as much as the Medical Experts found that he is medically unfit, to be employed in mine, the respondent is having no other alternative except to relieve him. It is incorrect to state that even after the finding of Medical Board, said worker has not been discharged and was continued to be employed by the management. Further follow up action has been taken and decision has been conveyed to him. The worker has not taken any step to assign a medical certificate by taking the issue by way of appeal. The claim that the worker has been examined by a doctor cannot be acted on by this respondent in the absence of non-compliance of statutory appeal and inaction on the part of the worker. The worker has been rightly discharged in terms of Rules as per the report of the Medical Board, and once it is found that he is unfit to be a worker in the mine, the question of again and again examining him will lead to no purpose. There is no rule to

do so especially in the absence of any protest by the worker by way of appeal etc. The unilateral view expressed by any Single Doctor cannot be an outraneous situation as against the cumulative decision taken by the Board. Hence respondent prays that the petition may be dismissed with costs.

5. On behalf of the petitioner, the worker himself has been examined as WW1 and Exs. W 1 to W-12 have been marked. On behalf of the management MW1 has been examined and Exs. M-1 to M-4 have been marked.

6. The point for our consideration is : Whether the discharge from service of the workman Th. V. Bhoorasamy is justified ? If not, to what relief he is entitled to ?

7. The worker Th. V. Bhoorasamy, a member of the petitioner union was working in the respondent Mines as a Stone Breaker. He was sent for medical examination by the Medical Board at Government Headquarters Hospital, Trichy. The medical board issued a medical certificate in Form 'D' under Rule 29(B), Mines (Amendment) Rules, 1978 holding that the worker is suffering from 'Aortic Valvular Disease' and he is medically unfit for any employment in the mines. Based on the medical report by an order dated 29-9-87, the management terminated the service of the worker, w.e.f. 15-10-87. The petitioner-union has sent the worker for re-examination to the District Medical Officer, Government Headquarters Hospital, Trichy by letter dated 12-10-87, marked as Ex. W-1. The petitioner-union has sent representations for re-employment of the petitioner which are marked as Ex. W-3 and W-5. The petitioner-union has also sent letter to the management on 15-12-87, and 2-4-88 which are marked as Ex. W-7 and W-9. The petitioner union's letter to the Conciliation Officer on 25-7-88 is marked as Ex. W-10. In spite of the repeated representations by the petitioner-union, the worker was not re-employed. But in the case of one Jagannathan, who was found medically unfit to work in the Mines, he has been re-employed in some other department and his services also have been regularised. Therefore, the contention of the petitioner is that the worker Bhoorasamy has been discriminated and terminated from service without any alternative employment.

8. Whether the termination of the worker is justified on medical certificate of unfitness to be employed in any mine has to be decided by analysing the various provisions of the Mines (Amendment Rules) 1978. The relevant rules which are necessary for a proper adjudication are extracted hereunder :

29-B Initial and Periodical Examination :—After such date or dates as the Central Government may by notification in the official Gazette appoint in this behalf, the owner, agent or manager of every mines shall make arrangements :—

- (a) (i) for the initial medical examination of every person employed in a mine; within a period of five years of the date so notified and the said examination shall be so arranged over a period of five years, that 1/5th of the persons employed at the mines undergo the examination every year :

Provided that in case of a mine where a system of carrying of such medical examination (of a comparable standard as determined by the Chief Inspector) is already in existence before the date aforesaid, the person who has undergone a medical examination under such a system on a date not earlier than five years before the date aforesaid shall be deemed to have undergone an initial medical examination under this sub-clause and the last date of his medical examination under the said system shall be taken to be date of this initial medical examination under these rules;

- (ii) for initial medical examination of every person checking employment in a mine, unless such person has already undergone within the preceding five years, a medical examination under these rules while in employment at another mine; and

- (b) for the periodical medical examination thereafter of every person employed in the mine at intervals of not more than five years.

(Provided that for the persons who are engaged in the process mining or milling of asbestos ore, periodic medical examination shall be done at least once in every twelve months and every such examination shall include all the tests specified in Form 'P' of the First Schedule except the X-ray examination, which shall be carried out once in every three years;

Provided further that the periodical medical examination or the X-ray examination or both, shall be conducted at more frequent intervals if the examining authority deems it necessary to confirm a suspected case of a dust related disease.)

29-C Examining authorities : The Medical Examination aforesaid shall be carried out by a Medical Officer appointed for the Mine or Medical Officer in the employment of the owner of the mine if any or by any Medical Officer employed in the Coal Mines Welfare Fund Welfare Organisation or any other mines welfare organisation failing which by any State or Central Government medical officer not below the rank of an Assistant Civil Surgeon.

29-F Standard and report of medical examination : (1) The examining authority holding initial medical examination under sub-clause (i) of Cl. (a) or periodical medical examination under Cl. (b) of rule 29-B shall examine a person according to the standard laid down in Form P and the initial medical examination under Sub-Clause (ii) of Cl. (a) of rule 29-B of all persons seeking employment in a mine shall be according to the standard laid down in Form P.I.

- (2) As soon as may be, after examination, a copy of medical certificate in Form O, shall be issued by the examining authority to the person concerned by registered post or delivered under receipt and another copy sent to the manager of the mine, concerned by registered post, or delivered under receipt.

- (3) The examining authority shall retain the third copy of the medical certificate.

- (4) In the case of periodical medical examination of a person, the examining authority shall also send the copy of the previous medical certificates of the persons concerned received in pursuance of sub-rule (1) of rule 29-D, to the manager of the mine concerned.

29-J Appeal for re-examination :—Where as a result of an initial medical examination under Cl. (a) or of a periodical medical examination under Cl. (b) of rule 29-B, a person has been declared unfit for employment in mines or in a particular category of mine or in any specified operations of mine, he may, within thirty days of the receipt by him a copy of the certificate referred to in sub-rule (2) of rule 29-F, file an appeal with the manager of the mines against the declaration aforesaid, and request for a medical re-examination by an Appellate Medical Board constituted under Rule 29-K.

- (2) (a) The manager shall arrange to have the appellant medically re-examined by the Appellate Medical Board within thirty days of the receipt of the appeal, and shall give to the appellant fifteen days' prior notice of the medical re-examination by the Appellate Medical Board Form O.

- (b) A person, who for any reasonable cause, fails to submit himself for a medical re-examination in accordance with the notice given to him under Cl. (a) shall be given another notice in Form 'R' in similar manner.

- (c) A person who has, without reasonable cause, failed to submit himself for a medical re-examination in accordance with the notice given to him under Cl. (b) shall cease to be in the employment at the mine or in a particular category of mine or in any

specified operations in mine, as the case may be, after the expiry of 30 days from the date notified for his medical re-examination.

- (3) In respect of every medical re-examination by the appellate medical board, the appellant shall pay such fees and the medical examination shall be conducted in such manner as may be determined by the Appellate Medical Board. In case the appellate Medical Board finds him fit for employment in mines, the fees shall be reimbursed in full to the Appellant by the owner of the mine where he is employed.

29-K. Constitution of Appellate Medical Board : For the purpose of medical re-examination appeal the appellate Medical Board shall consist of the following officers viz.,

- (a) One duly qualified Medical Officer in the employment of the Directorate General of Mines Safety, who shall also act as the convenor of the Board.
- (b) One Medical Officer, duly qualified in allopathic system of medicine to be nominated by the Chief Inspector in consultation with the welfare organisations set up by the Central Government for the persons employed in the mines.
- (c) One medical officer duly qualified in allopathy system of medicine employed in the State or Central Government or a Government Undertaking and not below the rank of Assistant Civil Surgeon :

Provided that if a Medical Officer under Cl. (b) or Cl. (c) is not available, the Appellate Medical Board shall be constituted with two persons only.

29-M. Unfit persons not to be employed :—(1) Where, as a result of an initial examination made under Cl. (a) or of a periodical medical examination under Cl. (b) of rule 29-B a person has been declared unfit for employment in mines or in a particular category of mines or in any specified operations in mines, he shall not be employed or continue to be employed in mines, or in the category of mine, or on the operations specified after the expiry of thirty days from the date of his medical examination unless he has filed an appeal under Sub-Rule (1) of rule 29-J against the declaration.

- (2) Where the person concerned has filed an appeal under sub-rule (1) of rule 29-J but has been declared by the Appellate Medical Board, after a medical re-examination, to be unfit for employment in mines, or in a particular category of mines or on any specified operations in mines, he shall not be employed or continue to be employed in mine or in the categories of mines or on the operations specified, after the expiry of 30 days from the date of his medical re-examination by the Appellate Medical Board :

Provided that, if the Medical Officer carrying out the initial medical examination under Cl. (a) or the periodical examination under Cl. (b) of rule 29-B or the Appellate Medical Board carrying out the medical re-examination of persons already employed is of the opinion that the disability of the person examined is of such a nature and degree that it will not seriously affect or interfere with the normal discharge of his duties, it may recommend his continuation in employment in the mine for a period not exceeding six months during which such person may get his disability cured or controlled and submit himself for another medical examination and be declared fit."

The gist of the above rules with regard to the examination of any worker is as follows :

Any person employed in the mines shall be subjected to medical examination by the initial state as well as once in five years. The first medical examination shall be carried out by a Medical Officer appointed in the Mine or any

State or Central Government Medical Officer not below the rank of Asst. Civil Surgeon. As soon as after the examination a copy of the medical certificate in Form 'O' shall be issued by the examining authority to the person concerned and another copy shall be sent to the Manager of the Mines. A person who is declared as unfit for employment in mines or in a particular category of mines as a result of the medical examination made within 30 days of the receipt by him of the copy of the certificate referred above can file an appeal with the Manager of the Mines against the declaration aforesaid and request for a medical re-examination by the Appellate Medical Board. A person declared unfit for employment in Mines after expiry of 30 days from the date of his medical examination unless he has filed an appeal for a medical re-examination by the Appellate Medical Board. The Medical Officer or the Medical Appellate Board who carried out the medical re-examination is of the opinion that the disability of the person examined is of such a nature and degree and it will not seriously affect or interfere with the normal discharge of his duties, it may recommend his continuation of employment in the mine for a period not exceeding six months, during which, such person may get his disability cured or controlled and submit himself for another medical re-examination and be declared fit. A perusal of the various documents would show that the respondent-management has not followed the rules laid down in the Mines (Amendments) Rules, 1978 as mentioned above. According to Rule 29C, the employee should be first examined by a medical officer appointed for the mine, or by a State or Central Government Medical Officer not below the rank of Assistant Civil Surgeon. Only on receipt of the report of the medical examination, a copy of the medical certificate in Form 'O' shall be sent to the person concerned and also the Manager of the mine concerned and on receipt of such medical certificate, the employee who is declared unfit may file an appeal for a medical re-examination by an Appellate Medical Board, according to Rule 29I. If the Medical Board is of the opinion that the disability of the person examined is of such nature and degree that it will not seriously affect or interfere with the normal discharge of his duties it may recommend his continuation in employment in the mine for a period not exceeding six months, during which period, such person may get his disability cured or controlled and submit himself for another re-examination and be declared fit. Instead of sending the worker for the examination by the Medical Officer, u/s 29C the respondent has straightaway sent the worker to a Medical Board consisting of three doctors who have given Ex. M-1 medical opinion. Thus the worker has been denied the opportunity to file an appeal before the medical board. The certificates of the Medical Board which examined the worker on 21-10-86 has been received by the respondent management only on 15-7-87, i.e. nearly 9 months after the examination of the petitioner, which is once again violation of Rule 29F of the Mines (Amendments) Rules, 1978. Till then the worker was allowed to continue in employment and the respondent has relieved the workman from employment on 15-10-87 after his work. Thus it can be seen that from the date of the medical examination of the worker who is said to be unfit for employment in the Mines, he has been allowed to work in the Mines for nearly one year (just short of 6 days). According to Rule 29M, a person who has been declared unfit for employment as a result of medical examination shall not be employed or continued to be employed in mines after the expiry of 30 days from the date of his medical examination. On the other hand, the respondent has allowed the worker to be in the same employment for which he was declared as medically unfit to continue for one year. Meanwhile, the petitioner-union has sent Ex. W-2 and W-3 letters to the respondent reminding the management, provisions of Rule 29M and requesting to allow the petitioner to continue in employment. Ex. W-5 is a reminder letter for Exs. W-2 and W-3 representations of the petitioner-union. But the respondent has not taken any care to send the petitioner for re-examination to find out whether his ailment has been cured and worker has become fit to continue in employment. On the other hand the worker himself had submitted himself for medical examination in the Government Hospital, at Dindigul and he has been declared as fit according to Ex. W-4/series. A heart specialist of Trichy Govt. Hospital, who was earlier a member of the Medical Board which declared the petitioner as unfit has re-examined him and found that he is medically fit. Therefore, the respondent management has not only violated the

rules framed under Mines (Amendments) Rules 1978 but also has failed to give alternative employment to the worker if he was found unfit to work in the mines. Ex. W-11 is a letter issued to one Jaganathan who worked in the same mines, who was found medically unfit to continue in employment of the mines, to be discharged on 16-10-87. But the same K. Jaganathan, has been given alternative employment and he has been allowed to continue in employment as is proved by Ex. W-12 dated 5-12-96. This would clearly show the discrimination by the respondent with regard to Bhoorasamy, the worker concerned in this dispute as well as his colleague K. Jaganathan.

It is not the contention of the respondent management that there is no alternative employment for the worker concerned. The said Bhoorasamy has joined in the respondent mines on 9-7-79. After serving for 8 years, he has been sent out on the ground of unfitness on medical certificates and those persons who joined the respondent mines during the relevant period as NMR have been allowed to continue in employment and their services have been regularised. But the respondent has not taken any effort to give any alternative employment to the worker Bhoorasamy if he is really medically unfit to work in the mines. In this connection a perusal of two judgements of the Hon'ble Apex Court would be useful. In (1994) 4 SCC P 460, NARENDRA KUMAR CHANDLA Vs. STATE OF HARYANA & ORS., the Hon'ble Apex Court has held as follows :

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must take every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation passing typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances, of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent appoint him to the post of LDC protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary."

In AIR 1991 SCC P. 1003, in ANAND BIHARI Vs. RAJASTHAN STATE ROAD TRANSPORT CORPN. JAIPUR, the Hon'ble Apex Court has held as follows :

"Although the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still remains to be considered is whether in the circumstances of the case and against the background of the relevant provisions of our Constitution, it can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that all the workmen have put in service with the corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. As is commonly known, the drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicle in sun, rain dust and dark hours of night. In the process, they are exposed to the glaring and blazing sun light and bleaking and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eye sight every moment of the driving, keeping a watchful eye on the road for bumps, bends, and slopes and to avoid all kinds of obstacles on the way. It is this constant straining of eyes, on the road which takes its inevitable toll of the vision. The very

fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers who are before us shows the extent of the occupational hazard to which the drivers of the corporation are exposed during their service. It also shows that weakening of the eye sight is not an isolated phenomenon but a widespread risk to those who take the employment of a driver expose themselves. Yet the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill health. That by itself is discriminatory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employee continue to serve till the date of their superannuation. Admittedly no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of theirs. In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best as it can to the workmen such as the ones involved in the present case. While evolving the Scheme and giving these directions we have kept in mind that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside. Thirdly, we are also mindful of the fact that the relief made available under the scheme not be such as would induce the workman to feign disability which, in the case of disability such as the present one viz., the development of a defective eyesight, it may be easy to do. Bearing in mind all the aforesaid factors, we direct the Corporation as follows :

- (i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job may be available and which he is eligible to perform.
- (ii) In case no such alternative job is available, each of the workmen shall be paid alongwith his retirement benefits, an additional compensatory amount as follows :
 - (a) Where the employee has put in 5 years or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service.
 - (b) Where the employee has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service.
 - (c) Where the employee has put in more than 10 years' but less than 15 years' of service the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service.
 - (d) Where the employee has put in more than 15 years' of service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service.

- (c) Where the employee has put in more than 20 years' service the amount of compensation shall be equivalent to two months' salary per year of the balance service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

- (iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.
- (iv) The option to accept either of the two reliefs if an alternative job is offered by the Corporation, shall be that of the workman."

A perusal of the judgement of the Hon'ble Supreme Court referred above would show that the workman who has been working for number of years with the management should not be sent away on the grounds of medical unfitness. On the otherhand, the management should come forward for continuation of the employment of the workman in some other category. Even though, the workman Bhoorasamy was certified unfit to be employed in the mines, even on 21-10-86, he was allowed to continue in the same mines in the same nature of work for nearly one year till 15-10-87. Even though the said worker is said to have been suffering from Cardio Vascular disease, nothing has happened to him during the said period. On the other hand, Ex. W-4 series would show that the petitioner is not having such disease. However, even if the petitioner is having any health problem which may make him unfit to be employed in the mines, the respondent management should have offered him alternative employment. But the management has failed to do so. In Ex. M.4 the respondent management has agreed to give him alternative employment only if the workman withdraws his dispute pending before this Tribunal. This kind of threatening attitude should not have been taken by the respondent management. When the management is bound to give alternative employment to the worker, it is unfair on the part of the management to give his alternative employment unless the dispute pending before this Tribunal is withdrawn by the petitioner. The respondent management is directed to reinstate the worker Bhoorasamy in service with full back wages and other attendant benefits.

In the result, award passed holding that the action of the management of M/s. Tamil Nadu Minerals Ltd., Ariyalur in discharging Shri V. Bhoorasamy NMR worker from service w.e.f. 15-10-87 is not justified. The respondent is directed to reinstate the worker Bhoorasamy in service with full back wages and other attendant benefits. No costs.

[Dated, this the 25th day of November, 1997.

S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner :

W.W. 1 : Thiru Bhoorasamy.

For Management

M.W. 1 : Th. J. Venkatesan.

DOCUMENTS MARKED

For Petitioner :

Ex. W-1/21-10-86 : Report of Medical examination issued to petitioner (Form O).

W-2/12-10-87 : Letter from petitioner-union to District Medical Officer asking for clarification.

W-3/13-10-87 : Representation by the Petitioner-Union to the management.

Ex.W-4 series : Hospital chit issued to workman by Dr. Ganapathy with another chit showing admission and discharge and fitness certificate (xerox copy).

Ex. W-5/17-10-87 : Reminder from petitioner-union to the management.

W-6/6-11-87 : Industrial Dispute raised before conciliation officer.

W-7/15-12-87 : Remarks of the management filed in the conciliation (xerox copy).

W-8/29-3-88 : Reply filed by petitioner to the remarks of the management (copy).

W-9/2-3-88 : Letter from Petitioner-union to the Divisional Manager (copy).

W-10/25-7-88 : Letter from Petitioner-union to the Conciliation Officer (xerox copy).

W-11/29-9-87 : Letter from respondent-management to Th. K. Jaganathan regarding medical unfitness.

W-12/5-12-96 : Form XI Wage slip issued to Th. K. Jaganathan.

For Management :

Ex. M.1/15-7-87 : Report of medical examination of workman under Rule 29M (xerox copy).

M-2/6-9-88 : Mercy petition from workman to the respondent-management (xerox copy).

M-3/23-3-89 : Letter from workman to the respondent-management (xerox copy).

M-4/29-3-89 : Letter from respondent to petitioner regarding alternative employment (xerox copy).

नई दिल्ली, 26 दिसम्बर, 1997

का.आ. 160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार डायरेक्टर, दूरदर्शन केन्द्र, मद्रास के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-97 को प्राप्त हुआ था।

[सं. एल-42011/9/92-आई आर (डीयू)]

के. वी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 26th December, 1997

S.O. 160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Doordarshan Kendra, Madras and their workman, which was received by the Central Government on 26-12-97.

[No. L-42011/9/92-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Wednesday, the 10th day of December, 1997

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal
Industrial Dispute No. 39 of 1993

(In the matter of the dispute for adjudication 10(i)(d) of the Industrial Disputes Act, 1947 between the management of Doordarshan Madras)

BETWEEN

New Delhi, the 26th December, 1997

The workmen represented by :

Shri K. Wilson,
A. G. 11, New Police Colony,
Raja Annamalaiapuram,
Madras-28.

AND

The Director,
Doordarshan Kendra,
Adama Road, Madras.

REFERENCE :

Order No. L-42011/9/92-IR (DU), Ministry of Labour,
dt. 27-4-93, Govt. of India, New Delhi.

This dispute coming on for final hearing on this day, in the presence of Thiru S. Srinivasan, Addl. Standing Government Counsel, appearing for the respondent-management, upon perusing the reference, claim, counter statement and all other papers on record, and the petitioner being called absent, this Tribunal passed the following.

AWARD

This reference has been made for adjudication of the following issue :—

“Whether the action of the Director of Madras, Doordarshan Kendra in not regularising the services of 16 Lighting Assistants as given in the Annexure is justified ? If not what relief they are entitled to ?”

ANNEXURE

1. K. Wilson
2. K. Sureshkumar
3. K. Ravi
4. M. Soundararajan
5. C. Vincent John
6. B. Justin Inmanuel
7. G. Sundaraj
8. R. Santhanam
9. N. Suresh
10. P. Ravindran
11. S. Sekar Kannan
12. M. Sridharan
13. S. Sukumar
14. K. Ramu
15. S. P. Subramaniam
16. R. Dakshinamurthy.

Petitioner called absent. No representation. In spite of several opportunities, petitioner has not let in any evidence. Hence dismissed for default.

Dated, this the 10th day of December, 1997.

THIRU S. ASHOK KUMAR, Industrial Tribunal

नई दिल्ली, 26 दिसम्बर, 1997

का.आ. 161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन नेवल कैंटीन सर्विसेस, कोचीन के प्रबंधन के संबंध निराशकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, कोचीन के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-12-97 को प्राप्त हुआ था।

[सं. एल-14012/97/90-आई.आर. (डी.यू.)]
के. वी.बी. उष्णी, डेस्क अधिकारी

S.O. 161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Labour Court, Cochin as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Naval Canteen Services, Cochin and their workman, which was received by the Central Government on 26-12-97.

[No. L-14012/97/90-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM

(Labour Court, Ernakulam)

Tuesday, the 11th day of November, 1997

PRESENT :

Shri Varghese T. Abraham, B.A., I.L.M., Presiding Officer
Industrial Dispute No. 8 of 1991 (C)

BETWEEN

The Area Manager, Indian Naval Canteen Service,
Cochin-682 004

AND

Smt. K. Valsamani, Koilakathu House, Near Village
Office, Mulavukadu, Dist. Ernakulam, Kerala-682 504.

Representations :

Sri. Alexander Skaria,
Advocate, Bishop's Garden,
Cochin-682 001. For Management.

Sri. M. Grijavallabhan,
Advocate, 'Sreedhanya',
SRM Road, Cochin-682 018. For Worker.

AWARD

The Government of India as per Order No. L-14012/97/90-IR (DU) dated 13-8-91 referred the following industrial dispute for adjudication :—

“Whether the action of Indian Naval Canteen Services Cochin in dis-continuing the service of Smt. K. Valsamani, Sales Girl w.e.f. 2-1-1990 is justified ? If not, to what relief the workman is entitled ?”

2. Today also worker has no representation. Name of worker called. Found absent. Batta is not yet deposited. There is no evidence to substantiate the case of the worker excepting her evidence as WW1. What can be inferred is that the worker is not interest in pursuing the dispute.

In the result, reference is answered holding that no industrial dispute is pending to be adjudicated.

Pronounced in open court on this the 11th day of November, 1997.

Ernakulam.

11-11-1997.

VARGHESE T. ABRAHAM, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

का.आ. 162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वासया बैंक लिमि., बंगलौर के प्रबंधन के संबंध निराशकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I, आंध्र प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-97 को प्राप्त हुआ था।

[सं. एल-12012/121/93-आई.आर. (बी.-I)]
पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 167.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-I, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Vysya Bank Ltd., Bangalore and their workman, which was received by the Central Government on the 23-12-97.

[No. L-12012/121/93-IR B.I.]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-(I) AT HYDERABAD

Present :—Shri V.V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated: 4th day of December, 1997.

INDUSTRIAL DISPUTE NO. 27 of 1995.

BETWEEN :—

Shri L. Rama Rao

D/o 37-1-419(6), 2 lane

Ongole, Prakasam Distt., A.P.

.. Petitioner

AND

The Chairman,

Vysya Bank Limited,

72, Saint Marks Road,

Bangalore-560 001.

.. Respondent

APPEARANCES

Sri C. Suryanarayana, Advocate for the petitioner

Sri C. Niranjan Rao, Advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-12012/121/93-IRBI dt. 19/22-12-94 u/s. 10(1)(d) of the I.D. Act, 1947 has referred the following disputes for adjudication.

“Whether the action of the management of Vysya Bank Ltd. in terminating the services of Shri L. Rama Rao Clerk, w.e.f. 31/10/91 is legal and justified? If not, to what relief the workman is entitled to and from which date?”

Both the parties appeared before this Tribunal and filed their pleadings.

(2) The petitioner workman filed a claim statement contending as follows :—

The petitioner was appointed as a clerk at the Markapur Branch of the Vysya Bank Ltd. on 9-1-81. He has been rendering service to the entire satisfaction of his superiors. The Local Branch Manager

obtained a letter from the petitioner in November '84 under duress that he had been withdrawn Rs. 2000 from the S.B. Account of one constituent of the bank and Rs. 5,000 from the account of another. With reference of the said letter dt. 22-11-94, the petitioner was placed under suspension and was served a charge-sheet. The petitioner objected to the proceedings of the domestic enquiry. He has to be prosecuted as per the Bipartite Settlement and Sastry Award. He denied the charges also. An inquiry into the charges was conducted by Sri K. V. Govindarajulu, Special Officer in the bank. There was no legal evidence on record substantiating the charges but the enquiry officer found that the charges are proved. The petitioner was served with a show cause notice and the petitioner questioned the enquiry without prosecuting the petitioner and also the lack of evidence. The Management witnesses have not stated that the petitioner withdraw the money or he maintained the scroll book. Sri P. B. Rama Rao, the account holder deposed that he himself withdraw the money from the bank. There is no evidence with regard to the second charge. Nonetheless, the petitioner was dismissed from service and it was confirmed by the Appellate Authority. The order of dismissal is liable to be set aside.

(3) The respondent management filed a counter contending as follows :—

The application itself is bad in law as the present dispute was not espoused by any Union. The petitioner was charged for withdrawing the funds from the Savings Bank Accounts of others and misappropriating the same. He was also charged with removing the withdrawal forms and causing disappearance of withdrawal forms. The charges are proved by the evidence of witnesses and his own confession given orally and in writing by him. The confession was not obtained under duress. Mr. P. B. Rama Rao, having received the money supported the petitioner in the enquiry. The enquiry officer found that the charges are proved. The dismissal of the petitioner should be up-held.

(4) The respondent filed the record of domestic enquiry into the court and the record is marked as Ex. M1 to M 43 and M45. The hand book on disciplinary procedures of the respondent bank is marked as M44. The counsel for the workman filed a memo into the court on 1-2-97 stating that he is not questioning the procedure in conducting the domestic enquiry and he is only questioning the findings of the enquiry officer. He sought for postponing the case for being heard on merits. Then both the parties are heard on merits.

(5) The point for consid ration is :—

“Whether the respondent is justified in terminating the service of the petitioner”.

(6) Point :—The petitioner has been working as a clerk in the Vysya Bank, Markapur Branch from 9-1-81. He was incharge of Savings Bank Accounts. P. B. Rama Rao (DW2), the Divisional Engineer in Electricity Board had the Savings Bank Account No. 4332 in the Markapur Branch of the Vysya Bank. He opened an account in Vysya Bank at Muppavaram in 1984. He gave Ex. M 19 letter to the Branch Manager, Vysya Bank, Muppavaram to get the amount lying to his credit in S.B. A/c No. 4332 at Markapur Branch, transferred to Muppavaram branch. He enclosed Ex. M20 passbook to the said letter. There was a cash balance of Rs. 2161.88 ps. by 1-3-83 in the said account as per the cash book. Thereupon, the Branch Manager, Muppavaram sent Ex. M 15 letter to the Branch Manager, Markapur to send the amount lying to the credit of Mr. Rama Rao to Muppavaram branch. Mr. Rama Rao used Ex. M31 and M32 cheque books for withdrawing the amounts from the Markapur branch. There is no proper evidence as to when actually these cheque books were handed over to the Muppavaram branch. The evidence of Sri N. Raghu Ramachandra Murthy, the then Manager, Markapur branch examined as MW5 before the enquiry officer, (Deposition is Ex. M 9) deposed that on receiving Ex. M 18 to M 20, he entrusted the papers on 14-5-84 to P.V. Satyanarayana, the officer (examined as MW4-deposition Ex. M 8) for effecting the transfer. Mr. P. V. Satyanarayana in his turn handed over the papers to the petitioner for closing the account and transferring the amount to the Muppavaram branch. On that evening, the petitioner informed Mr. Satyanarayana that the Savings Bank ledger sheet of Mr. P. B. Rama Rao was missing. He conveyed the same to the Manager, Mr. Raghu Ramachandra Murthy. Mr. Satyanarayana also states that when he handed over Ex. M18 to M20 to the petitioner for effecting the transfer, the colour of his face changed to some extent. Mr. Satyanarayana informed Mr. Ramachandra Murthy that the Savings bank ledger sheet of P.B. Rama Rao is missing.

(7) The further evidence of Mr. Satyanarayana and Raghu Ramachandra Murthy is that they have received two or three reminders from the Muppavaram branch about this transaction. P. B. Rama Rao also met the branch manager on 28-9-84 and reminded him about the transfer of the account. On the enquiry from the Branch Manager, Rama Rao informed him that he has not withdrawn any amount since one year. As the Savings Bank led-

ger sheet is missing and as Rama Rao respresented that he has not withdrawn any amount, they started a search. They could not find the withdrawal from but they found from the long book that there was a withdrawal of Rs. 2000 from this account on 10-3-84. The corresponding withdrawal form is not traced. This entire bundle was missing. It was searched again by the Branch Manager and the Administrative Officer of the Administration office who came from the administrative office and they found the bundle in the old records. None the less, they did not find the particular withdrawal forms in the bundle. They found that the petitioner signed and took the withdrawal form whose number ends by 503 from the register and this form is not traced. The petitioner signed in the register in token of receiving the said form. Ex. M17 (marked Ex. M4-A before the enquiry officer) is the relevant extract from the cheques issue register. It was also found from the scroll maintained by the Manager on 10-3-84, that while entries 1 to 14 were made by the Branch Manager, entries 15 to 18 were made by the petitioner and the remaining entries were made by the Officer Mr. P. V. Satyanarayana. On that day, the Branch Manager, the petitioner and the cashier were alone available in the bank from 10 A.M. to 12 noon when the transactions of the customers are taken up, the day being a Saturday, P.V. Satyanarayana, officer went to other places for securing deposits while the other officer N. Gupta was on leave. So the petitioner was made to attend to maintain the scroll also. The S.B. withdrawal from No. has to be noted in the scroll, but the petitioner noted the letters S.B. only against S. No. 18 as can be seen from Ex. M16, the relevant extract (marked an M3-A by the enquiry officer). The petitioner's signature in Ex. M17 cheques issue register and his hand writing in Ex. M 18, three column long book are identified by Mr. Satyanarayana and Raghu Ramachandra Murthy.

(8) On further verification, the Branch Manager found that there was a debit entry of Rs. 5,000 on 23-6-84 in the account of Kesava Rao and the withdrawal sheet for this amount was missing. The petitioner himself made several entries on that day. Subsequently, he was transferred to Ongole branch in July, 1984.

(9) When the Branch Manager, Raghu Ramachandra Murthy went to Ongole on 20-11-84 and confronted the petitioner about the entries made by him, the petitioner initially denied to have withdrawn the amounts and ultimately admitted to have withdrawn these amounts and caused disappearance of the documents. The Branch Manager, Raghu Ramachandra Murthy informed this fact to Sir

G. P. Rajagopallam the Divisional Manager working in Guntur (MW1-Ex. M5 deposition). The Divisional Manager instructed the Branch Manager to bring the petitioner to Guntur. Thereupon, the Branch Manager, the petitioner and the petitioner's father went to Guntur on 21-11-84 and stayed there on 21st and 22nd of November '84. Subsequently, the petitioner gave Ex. M7 application dated 24-11-84 for leave on 21st and 22nd of November '84.

(10) By the time, the branch manager, the petitioner and his father reached the Divisional Office, Mr. G. P. Rajagopallam, the Divisional Manager MW1 (Ex. M5) Mr. M.V.G.K. Gokle, the Superintendent of the office MW2 (Ex. M6), Sri G. Ch. Brahmanandam, an officer in the Divisional Office MW3 (Ex. M7) and two more officers by name Sainath and Koteswar Rao were holding an informal meeting in the chambers of the Divisional Manager in connection with the shifting of the divisional office and the proposed visit of the Chairman of the bank. When the Branch Manager and the petitioner entered the room of the Divisional Manager, the latter questioned the petitioner as to what irregularities he has committed. Thereupon, the petitioner admitted that he withdrew Rs. 2,000/- from the account of P. B. Rama Rao and Rs. 5,000/- from the account of Kesava Rao and later removed the withdrawal slips and S. B. account ledger sheets of both the parties. He further informed the Divisional Manager that he did so without knowing the consequences of his Acts and sought excuse. The petitioner offered to give a statement in writing setting out the above facts, Sri M. V. G. K. Gokle (Ex. M6) and Sri G. Ch. Brahmanandam (Ex. M7) also spoke to the same facts.

(11) It is the further evidence of the Branch Manager (MW5) that on the next day, the petitioner gave a letter confessing the guilt and seeking the excuse. This letter is addressed to the Branch Manager. Mr. Raghu Ramachandra Murthy, the Branch Manager sent the original to the Administrative office with a letter and a copy Ex. M15 to the Divisional Manager. The Divisional Manager forwarded Ex. M15 also to the Administrative office alongwith his letter Ex. M14 (Ex. M23 is a xerox copy). The original was filed before the enquiry officer but not submitted before this Tribunal. A copy Ex. M23 is filed in this Tribunal.

(12) Under the above circumstances Ex. M1 charge sheet was served upon the accused. The charge sheet contains 3 charges. Charges 1 and 2 relate to the petitioner taking a withdrawal form, filling it up and signing as

if signed by P. B. Rama Rao withdrawing Rs. 2,000/- from the bank on 10-3-84 and subsequently causing disappearance of the withdrawal form and the ledger sheet. The third charge is taking a withdrawal form on 23-6-84, filling it up and signing as Sri V. Keshava Rao, withdrawing Rs. 5,000/- from his account and again causing disappearance of the withdrawal form and the ledger sheet of Keshava Rao. The petitioner gave Ex. M2 reply stating that he should be prosecuted in the first instance for the criminal offences before conducting a domestic enquiry, that he is denying the allegation and that the letter dated 22-11-84 was obtained from him, under duress. Thereupon, the Disciplinary Authority ordered for a domestic enquiry by Ex. M39 dated 5-6-85. The enquiry officer recorded the depositions of 5 witnesses for the management whose evidence was referred to above. The petitioner did not give his evidence. He has only given answers Ex. M10 to the questions of the enquiry officer stating that he has nothing to state at that stage and he intends to examine defence witnesses. He examined the then cashier of Markapur branch to state that he does not remember to whom he has paid Rs. 2,000/- drawn from the account of Mr. P. B. Rama Rao, (Ex. M11) Mr. P. B. Rama Rao, DW2 (Ex. M12) to speak to the fact that he himself withdrew the amount of Rs. 2,000/- through a messenger and his father L. Kameswar Rao (DW3—Ex. M13) to speak to the fact that the Branch Manager dictated and took the Confessional letter Ex. M23. The petitioner submitted Ex. M33 arguments.

(13) The Enquiry Officer submitted Ex. M34 report with the findings that the charges are proved. The Management gave Ex. M35 second show-cause notice with the findings that the charges are proved and the petitioner should show cause as to why he should not be dismissed from service. The petitioner filed a Civil suit and stalled the proceedings till 1991. Ultimately, he was dismissed by Ex. M36 order dt. 31-10-91. His appeal was also dismissed by the Appellate Authority by Ex. M38 order dated 11-2-92. Thereupon, the petitioner raised this dispute.

(14) The learned advocate for the petitioner argued :

- (i) that the Manager, Industrial Relations who served Ex. M1 charge sheet, appointed the Enquiry Officer and passed the order of dismissal is not competent.
- (ii) The domestic enquiry cannot be taken up unless, the petitioner was prosecuted

in a criminal court and till the criminal case finally ends in a conviction or acquitted.

- (iii) There is no evidence to hold that the petitioner withdrew the amounts by forgoing the signatures and the confession was extracted under duress.

(15) The learned counsel for the respondent argued that the Bi-partite Settlement authorised the Chief Executive Officer to delegate powers and the powers are delegated to the Manager, Industrial Relations to take disciplinary action against the clerks, the Criminal prosecution is not a condition precedent to take disciplinary action and thirdly there is sufficient evidence to hold that the petitioner forged the signatures of the account holders and withdrew money from their accounts.

(16) As per 19.14 of the Bipartite Settlement on Industrial Disputes, between certain banking companies including the Vyaya Bank and their workman as well as the clauses of Sastry Award and Desai Award, "the Chief Executive Officer or the Principal Officer in India of a bank or and Alternate Officer at the Head Office or Principal Office nominated by him for the purpose shall decide which officer (i.e. the Disciplinary Authority) shall be empowered to take disciplinary action in the case of each office or establishment, (see page 68 of Ex. M 44). Accordingly, the Chairman of the respondent bank who is the Chief Executive Officer gave a notice dated 26-3-84 nominating the officers who can take disciplinary action against each employee and what punishment can be imposed. This notice and its annexures (see pages 49 to 61 of Ex. M 44) disclose that the General Manager, Joint General Manager, the Manager, Industrial Relations and Manager, Administration shall have jurisdiction over every office or establishment of the bank. The Divisional Manager has also powers to take disciplinary action against the clerks like the petitioner (see pages 49 and 50 of Ex. M 44). Thus, the Manager, Industrial Relations who took disciplinary action against the petitioner is competent to do so. The learned advocate for the petitioner argued that the Chief Executive cannot delegate powers to more than one person and this delegation is bad in law. He did not cite any decision in support of his contention. It is rightly pointed out by the learned counsel for the respondent that more than one officer is nominated for the purposes of disciplinary action, so that the domestic enquiries may not be prolonged if the enquiries have to be conducted by the same officer against

many employees. So there is no force in the said contention.

(17) He next contended that chapter XIX, page 63 of Ex. M 44 contains the provisions of Sastry Award as modified by Desai Award with subsequent improvements made in Bipartite Settlement and as per this chapter XIX, disciplinary action can be taken only after the employee was prosecuted for offence involving moral aptitude. He also argued that the domestic enquiry cannot be ordered without first prosecuting employee when he committed the offence. On a reading of chapter XIX, it can be seen that an employee can be prosecuted as well as subjected to a domestic enquiry. There is no clause that domestic enquiry cannot be ordered against an employee, unless he is first prosecuted in the criminal Court. The learned advocate for the respondent also relied upon 1997 (3) LLN page 73 UNION OF INDIA AND OTHERS vs. BIHARI LAL SIDHANA wherein Supreme Court held that when temporary cashier who was charged with mis-appropriating office cash, is acquitted by the criminal court, it does not automatically give him a right to reinstatement. The Competent Authority can take disciplinary action against him under the relevant rules. Under these circumstances, this contention is rejected.

(18) The third point is whether there is sufficient evidence to prove that the petitioner misappropriated the funds of the account holders. So far as the proof of the withdrawal etc., is concerned, the management relied upon Ex. M 16 (Ex. M 3-A in enquiry) entry made by the petitioner, the Managers scroll on 10-2-84 and Ex. M 4-A entry made in the S.B. withdrawal issue register on same day by the petitioner whose hand writing is identified by MW 4, the then officer in Markapur Branch. MW 5, the then Manager of the branch asked for a identified handwriting of the petitioner Ex. M-17 (Ex. M 4-A in enquiry). The two entries are with regard to the withdrawal of the amount from the account of P. B. Rama Rao. MW 4 also identified the entry Ex. M 6 made by the petitioner in loss savings bank sheet with regard to the second charge of withdrawing money from the account of Keshava Rao. The management also relied upon the confessional statement of the petitioner which are marked as Ex. M 15 and M 23 (M 2 and M 8 in enquiry) and spoken to by MWs 1, 2, 3 and 5.

(19) So far as the documents are concerned, the positive evidence of MW 4 is that the petitioner would be in the custody of S.B. withdrawal

for issue register. It is also called cheques issue register. The forms will be in the custody of MW 4. Every morning MW 4 hands over the blank withdrawal forms to the petitioner. The petitioner made an entry Ex. M 4-A marked as Ex. M 17 in this Tribunal and it is shown therein that the withdrawal form ending by 503 was issued to D.V.S. Rao and the petitioner signed in the relevant column. He also made an entry No. 18 Ex. M 3-A now marked as Ex. M 16 in the three column long book which is also called as Managers scroll that Rs. 2,000/- was paid under S. B. Account. He did not mention the account no. in Ex. M 16. When MW 4, the officer deposed about the handwriting, no suggestion was given to him that the said entries are not in the handwriting of the petitioner. The petitioner did not examine himself to deny the handwritings. It is only elicited from the Officer MW 4 that the Manager's scroll will not be entrusted to the employees. He explained the circumstances in which the petitioner and another employee made entries on that day by stating that due to absence of some officers and pressure of work, the day being a Saturday and working hours are from 10.00 A.M. to 12 noon only, the work is entrusted to them. The fact that the petitioner made an entry in the scroll is spoken to by MW 5, the Branch Manager also who is supposed to make entries in this scroll. It was not suggested to him that the petitioner did not handle the scroll at all. It is only elicited from him that through a cheque book is given to the customer, he is also permitted to withdraw the money by using a withdrawal form.

20. MW5, the Manager also deposed about P.B. Rama Rao informing him personally that he did not operate the account for about a year. As against the above material, the petitioner examined Mr. P.B. Rama Rao himself as DW2 (Ex.M12). In the enquiry/besides the cashier as DW1 (Ex.M11) The cashier stated that he made several payments of Rs. 2,000/- each on 10-3-84 but he does not remember to whom he paid the amounts. He does not remember whether he paid the amount to P.B. Rama Rao or whether the petitioner entered the cashier's cabin on that day. Mr. P.B. Rama Rao deposed that he himself withdraw the amount of Rs. 2,000/- in February or March '84 by sending a cheque through a messenger and withdraw the amount. Later, he sought for transfer of his account from Markapur branch to Muppavaram branch. He admits that he met the Manager of Markapur branch (MW5) and informed him that he has surrendered one cheque book and one pass book to the Manager of the Muppavaram branch and he does

not remember how many cheque books were issued to him. He found another cheque book in his house later and he surrendered it in October '84. He admitted in his cross-examination that he does not remember how much amount is lying to his credit by the day he asked for transfer of account. He used Ex.D5 and D6 cheque books. He was writing the cheques in green ink but he wrote the disputed cheque with black ink as found in counterfoil. He denied to suggestion that he admitted before the Branch Manager and accountant that he did not withdraw Rs. 2,000/- on 10-3-84. He does not remember whether he surrendered the cheque books D5 and D6, on 15-10-84. He does not know when the cheque for Rs. 2,000/- dated 8-8-84 was presented by the messenger. It was suggested to him that he having received Rs. 2,000/- with interest from the petitioner, giving false evidence. I have no reason to disbelieve the evidence of MW4 and MW5. This witness states that he sent the cheque through a messenger on 8-3-84 but he does not know when it was presented for encashment. He does not say that the messenger brought the amount and paid the same to him. When he sent the cheque through a messenger, he should send the pass book also but he did not send the pass book. Withdrawal of Rs. 2,000/- does not find a place in the pass book. He kept the cheque books with him and handed over the pass book only to the Branch Manager, Muppavaram alongwith a letter for getting the account transferred. So the branch manager, Muppavaram sent Ex.M20 pass book only to the branch manager, Markapur alongwith his letter Es.M18 and Ex.M19 letter of DW2. It was so mentioned in Ex.M18 also. Had MW2 surrendered the cheque books alongwith the M19 letter and M20 pass book, the branch manager Muppavaram would have sent them also to the branch manager, Markapur. As the account holder DW2 retained the cheque books with him, he could manipulate the same. He informed the Branch Manager, Markapur on 28-9-84 only that he withdraw the amount. It is in the evidence of P.B. Rama Rao, the accounts holder about himself withdrawing the amount of Rs. 2,000/- He is only accommodating the petitioner at the request of the petitioner's father who was a DCTO at that time.

21. So far as the withdrawal of Rs. 5,000/- from the account of Keshava Rao is concerned, there is a vague evidence of MW4 that there is an entry Ex.M21 (Ex.M6-A in Ex.M6 in enquiry) loose savings bank sheet made by the petitioner. The said Ex.M6-A is marked as Ex.M21 in this court.

Ex.M2 only shows that an amount of Rs. 5,000/- was deposited into the account of Keshava Rao on 5-11-84. The withdrawal entry is not there. The management states that the petitioner himself had his amount deposited into the account through his friend on 5-1-84 as per Ex. M45 deposit form. There is no proper evidence with regard to this charge about withdrawal of the amount by the petitioner, apart from his confession to which I would refer to *infras*.

22. The evidence of the branch manager as MW5 is that after verification of the records, he suspected that the petitioner withdrew the amounts and so he went to Ongole on 20-11-84 as by that date the petitioner was working in Ongole Branch, when he confronted the petitioner with this handwriting in the blank cheque issue register Ex.M17 the petitioner confessed to have withdrawn the amounts. He conveyed the same to the Divisional Manager MW1 by phone and the Divisional Manager instructed him to bring the petitioner to his office at Guntur. Thereupon the Branch Manager, the petitioner and his father DW3 went to Guntur on 21-11-84 and stayed there on that day and on the next day. The petitioner applied for leave for 21-11-84 and 22-1-84 as per Ex.M7.

(23) The evidence of MWs 1, 2 and 3 the Divisional Manager, the Superintendent in the Divisional Office and an officer in the Divisional Office respectively as well as the Branch Manager Lx. M5 is that soon after the petitioner and the branch manager entered the room of the Divisional Manager where MWs 1, 2, 3 and some other officers were discussing about shifting of the divisional office and the proposed visit of the chairman, the Divisional Manager questioned the petitioner as to what he did. The petitioner confessed to have withdrawn the amounts without knowing the consequences and sought excuse. The Divisional Manager asked the petitioner to give his version in writing. Thereafter the Branch Manager and the petitioner left the chambers of the Divisional Manager. The further version of the Branch Manager is that on 22-11-84, the petitioner gave his statement in writing admitting that he has withdrawn the amounts and seeking for excuse. He gave a copy of it to MW1 and sent the original to the Administration office. MW1 sent Ex. M15 copy alongwith M14 letter to the administrative office. The Branch Manager MW5 also sent the original to the administrative office. The original appears to have been marked as Ex. M8 in the domestic enquiry. Another xerox copy is filed in this court and it is marked as M23 in this court. The version of the petitioner is that the statement was taken under duress from him. He examined his father as DW3 in support of his contention. When the Divisional Manager deposed to the confession of the petitioner, it was only suggested to him that the petitioner did not come to the Chambers on 21-11-84. It was suggested to the Superintendent that he was not present in the meeting held in the Divisional Manager's Chamber. It was suggested to the officer MW3 that the petitioner did not enter the chambers of the Divisional Manager when the meeting was going on. The Branch Manager MW5 was asked to take special oath holding the Ramayana book in his hand and say that what he deposed in the chief examination is true. This request is rejected by the enquiry officer as it is not provided in the Bipartite Settlement. It was elicited from MW5 in cross examination that he cannot say whether anyone also was present when the petitioner confessed the withdrawals at Ongole and that he took the petitioner to Ongole without taking permission of the Branch Manager of Ongole branch. He denied suggestion that he himself dictated the confession letter to

the petitioner. The petitioner's father only deposes that MW5 the Branch Manager dictated the confessional letter. He does not state that either the Branch Manager, the Divisional Manager or anybody else pressurised the petitioner to write the confessional letter. There is no evidence that the petitioner wrote the letter under duress. The petitioner did not examine himself to speak to his contentions. MWs 1, 2, 3, and 5 have no grouse to speak falsehood against the petitioner. They have no motive to give false evidence. I, therefore, accept the evidence of MWs 1 to 3 and 5 that the petitioner confessed that he had withdrawn the amounts voluntarily.

(24) The petitioner raised the dispute belatedly. In AIR 1997, Supreme Court 2249=1997 (76) FLR page 522 SUDHIR VISHNU PANVALKUR Vs. BANK OF INDIA, the Supreme Court held that when the Writ petition was filed by the bank employee 3-1/2 years after termination, it suffers with vices of delay and laches. The Supreme Court in 1971 LAB I.C. page 1393 M/S. FRANCIS KLININ & CO., PRIVATE Vs. THE WORKMEN AND ANOTHER held that when service of an employee is discharged on the ground of loss of confidence, the Industrial Tribunal should not either direct therein statement or direct that he should be employed in another job. In the said case, the workman discharged was a watchman accused of thefts. Similarly, Karnataka High Court held in 1995 (1) LJ 1076 D. PADMANABHUDU Vs. BANK OF INDIA & ANOTHER that an accounts clerk who was dismissed from service by the bank for mis-appropriation, cannot be reinstated as it is a serious mis-conduct.

(25) For the foregoing reasons, an Award is passed holding that the respondent bank is justified in dismissing the petitioner from service.

Dictated to the Sr. Stenographer, transcribed by her, corrected by me, given under my hand and the seal of this Tribunal on this the 4th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.

Appendix of Evidence

No oral evidence adduce by both the parties.

Documents marked for the petitioner/workman—Nil.

Documents marked for the respondent/Management (by consent):—

- Ex.M1 : Articles of charges dtd. 19-4-85 issued to petitioner.
- Ex.M2 : Explanation dtd. 24-5-85 submitted by the petitioner to Ex. M1.
- Ex.M3 : First oral statement dtd. 29-10-85 of Sri L. Rama Rao.
- Ex.M4 : Order sheet of the Enquiry Officer.
- Ex.M5 : Deposition dtd. 29-10-85 of S.P. Rajagopal in the enquiry.
- Ex.M6 : Deposition dtd. 29-10-85 of M.V.G.K. Gokhala in the enquiry.
- Ex.M7 : Deposition dtd. 29-10-85 of G.CH. Brahmanandam in the enquiry.
- Ex.M8 : Deposition dtd. 14-2-86 of P.V. Satyanarayana in the enquiry.
- Ex.M9 : Deposition dtd. 14-2-86 of G. Raghuramachandra Murthy in the enquiry.
- Ex.M10 : Second oral statement dtd. 14-2-86 of the Charge Sheeted employees.

- Ex.M11 : Deposition of P. Koteswar Rao dtd. 4-6-86 in the enquiry (DW1)
- Ex.M12 : Deposition of P.B. Rama Rao in the enquiry (DW2).
- Ex.M13 : Deposition of Sri L. Kameswara Rao (DW3).
- Ex.M14 : Letter dt. 7-12-84 of the Divisional Manager to the Joint General Manager, Administration office, Bangalore.
- Ex.M15 : Xerox copy of the letter dtd. 22-1-84 of the petitioner to the Branch Manager, Vyasa Bank, Markapur (Ex.M2 in the enquiry).
- Ex.M16 : True copy of 3 column long book [M3(a) in the Enquiry].
- Ex.M17 : True copy of cheque issue register (Ex. M4 in the enquiry).
- Ex.M18 : Letter dtd. 12-5-84 of the Branch Manager, Muppavaram Branch addressed to Markapur branch (Ex.M5 in the enquiry).
- Ex.M19 : Letter of Sri P.B. Rama Rao addressed to the Branch Manager, Muppavaram Branch [Ex.M5(a) in the enquiry].
- Ex.M20 : S.B. Pass Book of P.B. Rama Rao [Ex.M5(b) in the enquiry].
- Ex.M21 : S.B. Sheet of A/c. No. 2741 of Sri V. Keshava Rao [Ex. M6 and M6(a) in the enquiry].
- Ex.M22 : Sick leave application dt. 24-11-84 of charge sheeted employee (Ex.M7 in the enquiry).
- Ex.M23 : Letter of the petitioner dtd. 22-11-84 addressed to the Manager, Muppavaram branch (Ex.M8 in the enquiry).
- Ex.M24 : Letter dtd. 28-5-86 of the Management representative addressed to the Enquiry Officer.
- Ex.M25 : Acknowledgement dtd. 19-5-86 of the petitioner for the documents he received.
- Ex.M26 : Xerox copy of the S.B. Sheets containing A/c. Nos. 2306, 2311, 2312, 2313, 2315, 2318, 2320, 2321, 2323, 2326, 2327, 2328, 2331, 2332, 2334 (marked as Ex. D1 in the enquiry).
- Ex.M27 : Letter of the Branch Manager, Markapur dtd. 21-2-86 addressed to Sri P.B. Rama Rao (Ex. D2 & D4 in the enquiry).
- Ex.M28 : Extract of Current A/c. of P.B. Rama Rao.
- Ex.M29 : Letter dt. 20-3-86 of the Manager, Markapur branch addressed to P.B. Rama Rao, Ex.D3 in the enquiry.
- Ex.M30 : Unsigned letter with copy of Sri P.B. Rama Rao addressed to Manager, Markapur branch.
- Ex.M31 : S.B. Cheque book of Sri P.B. Rama Rao (Ex. D5 in the enquiry).
- Ex.M32 : S.B. Cheque book of Sri P.B. Rama Rao (Ex.D6 in the enquiry).
- Ex.M33 : Written Brief dtd. 24-10-86 filed by the petitioner.
- Ex.M34 : Enquiry report dtd. 21-11-86.
- Ex.M35 : Second Showcause notice dtd. 26-11-86 issued to the petitioner proposing the punishment of dismissal.
- Ex.M36 : Order of dismissal dtd. 31-10-91 issued to Sri L. Rama Rao.
- Ex.M37 : Appeal petition dtd. 26-12-91 of the petitioner submitted to Asst. General Manager (I&R), Vysya Bank Ltd., Bangalore.
- Ex.M38 : Order of the Appellate Authority dtd. 11-2-92 rejecting the appeal of the petitioner.
- Ex.M39 : Order dtd. 5-6-85 Appointing Sri K.V. Govindaraju as Enquiry Officer and Sri Satish G. Gosari as Management representative.
- Ex.M40 : Memo dtd. 29-10-91 of the Manager, Industrial Relations, Ongole addressed to Sri L. Rama Rao (petitioner).
- Ex.M41 : Proceedings dtd. 31-10-91 of the personal hearing held on 30-10-91.
- Ex.M42 : Copy of the Telex message sent by the petitioner regarding appeal petition.
- Ex.M43 : Letter addressed by the AGM (I&R) dtd. 17-1-92 to Sri L. Rama Rao (petitioner).
- Ex.M44 : Hand book on Disciplinary proceedings in Vysaya Bank.
- Ex.M45 : Xerox copy of the payment voucher for Rs. 5,000/- dtd. 5-11-84 to the credit of V. Keshava Rao.

नई दिल्ली, 23 दिसम्बर, 1997

का.आ. 163.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार को स्टेट बैंक आफ़ हैदराबाद के प्रबंधन के संसद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-नेथर कोर्ट नं. 2 बम्बई

के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-97 को प्राप्त हुआ था।

[सं. एन-12012/43/95-आई. आर (बी.-I)]
पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal cum-Labour Court No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Hyderabad and their workman, which was received by the Central Government on 23rd December, 1997.

[No. L-12012/43/95-IR(B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/30 of 1996

Employers in relation to the management of
State Bank of Hyderabad,

AND

Their workmen.

APPEARANCES :

For the Employer—Mr. Gobindram D. Talreja, Advocate.

For the Workmen—Mr. S. M. Dharap, Advocate.

Mumbai, the 3rd December, 1997

AWARD—PART-I

The Government of India, Ministry of Labour by its Order No. L-12012/43/95-IR(B-I) dated 10th June, 1996 had referred to the following Industrial dispute for adjudication :

“Whether the action of the management of State Bank of Hyderabad, Bombay in dismissing the service of Shri P. Srinivasan, clerk working at Dadar Branch w.e.f. 11th December, 1992 is justified or not? What relief should be granted?”

2. Srinivasan the concerned workman had filed a statement of claim at Exhibit-3. He was work-

ing as a clerk with the State Bank of Hyderabad at Branch Dadar. On 26th September, 1988 he was suspended. Thereafter a chargesheet was issued to him on 3rd September, 1991.

3. By the said chargesheet it is alleged that :

“While you were working as a Clerk at our Dadar Branch during the period from 1986 to August, 1988 the following acts were observed :—

- (1) Unauthorisedly drawing funds from Savings Bank and Current Account through unsigned/unconfirmed Savings Bank withdrawal forms general debit vouchers (as per Annexure ‘A’).
- (2) Putting through a large number of unauthorised transfer transactions from one account to another without any written instructions (as per Annexure ‘B’).
- (3) Fraudulently inflating/deflating balances to cover up the above unauthorised transfer of funds (as per Annexure ‘C’).

It is thus observed that you were manipulating the accounts of our Dadar Branch and failed to discharge your duties sincerely to protect the interests of the Bank.”

4. The workman pleaded that one Shankar Rao was appointed as the inquiry officer to inquire into the said charges. It is asserted that the inquiry which was held against him was against the Principles of Natural Justice. The management nor the inquiry officer gave a proper opportunity to defend his case by giving him the documents which he called for. One D. M. Ruplekar was examined by the management as their witness but had no authority to do so. He opposed the examination of Ruplekar but it was not considered by the inquiry officer. It is pleaded that he asked for production of documents which were relevant to the inquiry but they were not allowed. It is asserted that he was also not allowed to lead evidence. All these things caused prejudice and vitiated the inquiry.

5. It is pleaded that he was not given a suspension allowance as per the rules. That also affects the inquiry. In other words it can be said that it is against the Principles of Natural Justice. It is averred that the findings of the inquiry officer are perverse which are not based on the evidence before him. It is pleaded that a personal hearing which was asked by him was not granted by the disciplinary authority. It is averred that the charges levelled against him in the chargesheet by the management and the first information report in the police case are the same and therefore it was not proper

to continue with the inquiry proceedings during the pendency of the criminal proceedings against him. For all these reasons it is submitted that the action which is taken by the management be set aside and he may be reinstated in service in continuity with full back wages.

6. The management resisted the claim by the written statement (Exhibit 5). It is averred that the domestic inquiry which was conducted against the workman was as per the principles of Natural Justice. He was supplied with all the documents asked for. He was given an opportunity to defend his case properly. The witness which was examined by the management was relevant witness. For all these reasons it has to be said that the inquiry which was held against the workman was as per the Principles of Natural Justice. It is denied that the findings of the inquiry officer are perverse and not based on the evidence before him. It is asserted that the subsistence allowance which was paid to the workman was proper and no prejudice was caused to him. For all these reasons it is averred that the workman is not entitled to any of the reliefs as claimed.

7. The workman filed a rejoinder at Exhibit-6, and reiterated the contentions taken by him in the Statement of Claim and denied the statements made by the management in the written statement which are contrary to his interests.

8. I have framed issues at Exhibit-9. Issue Nos. 1 & 2 are treated as preliminary issues. The issues and my findings thereon are as follows :

Issues	Findings
1. Whether the domestic inquiry which was held against the workman was against the Principles of Natural Justice ?	Yes
2. Whether the findings of the inquiry officer are perverse and not based on the evidence before him ?	Yes

REASONS

9. Srinivasan examined himself at Exhibit-21 and relied upon the documents which he produced alongwith the Statement of Claim and filed by the management at Exhibit-8. As against this the management examined A. Shanker Rao (Exhibit-25), the inquiry officer, and also relied upon the documents which they produced.

10. It is not in dispute that the workman was working as a clerk at Dadar Branch during the period from 1986 to August, 1988. By an order dated 3rd August, 1988 he was transferred to Nariman Point Branch and was relieved on 10th August, 1988. Later on the management re-

transferred him to Dadar Branch and suspended with immediate effect by an order dated 26th September, 1988. He was directed not to leave the Head Quarters without prior permission of the Controlling authority. That suspension order which was sent to the workman by registered post was received back the remarks addressee not found. The worker left the Headquarters without prior permission of the controlling authority and his whereabouts were not known until 8th March, 1990 when the CBI officials brought him to Dadar Branch and suspension order dated 26th September, 1988 was delivered to him on 8th March, 1990.

11. The workman was served with a chargesheet dated 3rd September, 1991. He was asked to submit his explanation within ten days. But, instead of submitting the explanation he wrote a letter dated 4th December, 1997 for inspection of certain documents, vouchers, registers, balance books which was granted to him by a letter dated 9th January, 1992. Srinivasan affirmed that he was not allowed to inspect the balancing book. That has caused prejudice. But in the cross-examination he accepts that the inquiry officer had given him weeks time to go through the balancing book and account opening forms. He further accept that he was given time for inspecting balance books since it was not made available earlier. He further deposed that he verified the balancing book and account opening form as per his request. He did not satisfy which documents then remained to be shown to him at the time of inquiry. On the contrary he affirmed that the management gave him list of documents on which it relied. That goes to show that the documents on which the management relied were inspected by the workman and no prejudice is caused to him.

12. Srinivasan affirmed that the management examined one D. M. Ruplekar even though he opposed his examination. He admits the position that Ruplekar was working as a bank manager at Dadar Branch where he was working. Rao (Exhibit-25) the inquiry officer affirmed that he disallowed the request of the workman for not allowing Ruplekar as the witness with cogent reasons. It can be further seen that the case is based on documents. Ruplekar was the manager of the branch. He testified on the basis of the documents and there is nothing wrong in it. I, therefore do not find any merit in the submission on behalf of the workman that the inquiry officer did not consider his objections properly.

13. There are certain allegations for holding the inquiry against the Principles of Natural Justice. But, from the perusal of the cross-examination of Srinivasan it is very clear that those points were considered by the inquiry officer. Srinivasan accepts that he was asked by the inquiry officer whether he would like to represent himself by an office bearer of the union. Then he decided to defend

his case but was asked whether there are any witnesses on his side to be examined for which he informed that he does not want to examine anybody. He deposed that he does not remember whether he made a statement before the inquiry officer that he does not want to make any statement. He had written a letter dated 3rd July, 1992 to the management wherein he had not made any grievance that he was not permitted to make any statement in defence. I, therefore find that this is an after thought and this contention is taken only with a view to get the benefit. I do not find any merit in it.

14. Srinivasan affirmed that he made requests by letter dated 3rd March, 1992 for production of documents. It is rightly argued on behalf of the management that the workman confirmed the communication dated 20th January, 1992 and made verifications of the documents requested by him vide letter dated 4th December, 1991 and hence there was no scope for further verification as requested by him by the letter dated 4th December, 1991 and hence there was no scope for further verification as requested by him by the letter dated 3rd March, 1992. I find substance in it.

15. In the earlier paragraphs I have discussed the points on the basis of the testimony of Srinivasan on which he wanted to declare a domestic inquiry as against the Principles of Natural Justice. Mr. Dharap while arguing the matter had referred to some other points on the basis of the documents on the record. Now I would like to discuss them below. He argued that the charge-sheet is vague. I have already referred to the chargesheet. After perusal of the chargesheet it can be seen that it is clear in terms and there is no vagueness. No doubt there is no mention of the clause under which the bank wants to hold him guilty. But that does not vitiate the proceedings. What is to be seen by the charge is whether the delinquent—the worker understands what is the grievance of the management against him and for which he had to face the inquiry. I do not find anything which can be said to be vague.

16. It is tried to argue that subsistence allowance was not properly paid. Mr. Talreja, the Learned Advocate for the management argued that it is not sufficient to say that subsistence allowance was not properly paid but the workman has to establish that non-payment of such an allowance has prejudiced him. He could not participate in the inquiry. It can be seen that the worker did participate in the inquiry to the fullest extent. The case is not of non-payment of subsistence allowance but is of lesser payment of subsistence allowance. That has not caused any prejudice to the workman. On that account the inquiry cannot be said to be vitiated.

17. Rao (Exhibit-25) affirmed that he was appointed as an inquiry officer by the management. The workman was given full opportunity to participate in the inquiry and he had signed the inquiry proceedings. He further affirmed that the workman was given opportunity to lead evidence as per his choice. He affirmed that the workman stated that he had no witness to examine in defence and did not examine any defence witness. He recorded the proceedings faithfully and correctly in his own hand writing. The photo copies of the inquiry proceedings are at pages 1—293 of Exhibit 18.

18. Rao affirmed that he had given a report (pg. 294-295) of Exhibit-8 in respect of the inquiry which he carried out. It is argued on behalf of the workman that the report is not based on the evidence before the inquiry officer. As such it has to be said that the inquiry which was conducted against the workman was against the Principles of Natural Justice. It is observed by Their Lordships in *Sir Enamel and Stamping Works Ltd. Vs. Their workman* 1963 H LLJ 367 that the inquiry cannot be said to be have been properly held unless the inquiry officer records his findings with the reasons for the same in his report. After perusal of the report it is very clear that the inquiry officer had not considered all the material before him. It can be seen that the material is about 300 pages and the inquiry officer had wound up the things hardly in one page. It is because the first portion deals with when he was appointed, who was the presenting officer, on which dates the inquiry took place and the charges and list of documents. After going through the report it reveals that it is not only cryptic but does not deal with all aspects of the matter. It is tried to argue on behalf of the management that the inquiry officer is required to make a draft report indicating clearly his conclusions and reasons in support thereof. It is not necessary that the report should be elaborate. It may be that the inquiry officer need not write a very long and elaborate report but since his findings are likely to lead to the dismissal of the employee it is his duty to record clearly the precisely his conclusions and to infact prefer his reasons for reaching the said conclusions. After perusal of the report one has to say that it is only a brief report but what is required is not given at all. The disciplinary authority had dealt with more elaborately but I have to say the report of the inquiry officer and not of the disciplinary authority. After going through the report I am not in a position to come to the conclusion on which basis he had come to those conclusions.

19. The workman had filed a photo copy of the charge-sheet along with the statement of claim which I have referred to above. There is no charge of absentism. The management had produced at page 355 a letter dated 25th October, 1991 addressed by it to the workman informing him his

absence from 11th August, 1988 to 7th February, 1990. Thereafter there is another letter dated 4th December, 1991, pages 356-357 where by the management called upon the workman to explain his unauthorised absence from 11th August, 1988 and 7th March, 1990. In the report the inquiry officer had referred to charge No. 2 as unauthorised absence from 11th August, 1988 to 7th February, 1990. So far as its allegation is concerned no chargesheet is produced on the record. It is in the written argument. It is submitted on behalf of the management that the workman was confirmed his unauthorised absence from 11th August, 1988 to 7th February, 1990 by its letter dated 22nd October, 1988. Naturally the findings to that effect in the inquiry report cannot be said to be based on the charge dated 3rd September, 1991.

20. It is very clear from the documents on the record that even though the workman was suspended on 21st September, 1988 he could not be served with a chargesheet as he was not traceable. Therefore the inquiry could not be started in view of the voluminous documents and the workman asked for its inspection. I therefore find that there cannot be said to be delay in the conduct of the inquiry.

21. For the above said reasons I find that as the inquiry officer had not submitted his report properly the inquiry has to be said to be against the Principles of Natural Justice and his findings are perverse.

ORDER

The domestic inquiry which was held against the workman was against the Principles of Natural Justice.

The findings of the inquiry officer are perverse.
S. B. PANSE, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1997

का.आ. 164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदर्न रेलवे, पालघाट के प्रबलत्व के सबूत नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पालघाट के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-97 को प्राप्त हुआ था।

[स. एल -41012/252/95 आई आर (बी.आई.)]
पी. जे. साईकल, डेस्क अधिकारी

New Delhi, the 23rd December, 1997

S.O. 164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Palakkad as shown in

17 GI/97—11

in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Rly, Palakkad and their workman, which was received by the Central Government on the 17-12-97.

[No. L-41012/252/95-IR(B.I.)]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD

(Friday the 5th Deceober 1997/14th Agrahayana 1919)
PRESENT

Shri B. Ranjit Kumar
Industrial Tribunal

Industrial Dispute No. 71/96(C)

BETWEEN

The Divisional Personnel Officer, Southern Railway,
Palakkad-678001.

(By Adv. T. R. Rajagopalan, Palakkad)
AND

Smt. P. Kasu, C/o. C. P. Menon, Southern Railway
Labour Union, Edappally North, Cochin-24.

(By Sri. C. P. Menon)

AWARD

The Government of India, Ministry of Labour as per Order No. L-41012/252/95-IR (B.I) dt. 13-8-96 referred the following issues for adjudication :—

"Whether the claim of the workman Smt. P. Kasu that she was born on 16-12-52 is justified? If so, whether the action of the management of D.P.O. S. Rly, Palghat in superannuating the workman on 30-4-94 is legal and justified? If not, to what relief is the workman entitled to?"

(2) The contention of the worker as stated in the claim statement dt. 30-9-96 and rejoinder dt. 20-1-97 is that her date of birth is 16-12-52 and the action of the Management in superannuating her on 30-4-94 on the alleged ground that she had attained 58 years of age is illegal and unjustified. At the time of superannuation she was working as woman Mazdoor/Gangman. According to worker, she had submitted affidavits attested by Notary as well as Judicial Magistrate of the 1st Class declaring her date of birth as 16-12-52, but the Management did not accept the same despite the fact that they had given an undertaking before the Central Administrative Tribunal that the affidavit attested by a Notary will be taken on record and considered.

(3) The Management has filed a written objection dt. 3-1-97 contending *inter alia* that the reference order is not maintainable for non-joinder of necessary parties Viz. Union of India, Ministry of Railways or Departmental Officer of the worker and the termination of the services of the worker w.e.f. 30-4-94 on her attaining the age of superannuation is outside the ambit of the term "retrenchment" under Sec. 2(oo) of the Industrial Disputes Act. On the merit of the dispute, the Management would contend that the age of the worker recorded in the LTI Register at the time of her initial engagement on 21-4-76 was 40 years and there was a marked difference of 16 years 7 months and 5 days with the age sworn before the Notary Public on 28-1-92 and the Judicial Magistrate of the 1st Class on 24-4-93. Based on the submission made before the Central Administrative Tribunal, Ernakulam Bench in OA No. : 1941/93 the affidavit filed by the worker was taken on record, but the same could not be acted upon since it had no relevance at all to the age declared on the date of initial engagement i.e. 21-4-76. It is further submitted by the Management that as per the Railway Ministry's decision(C) quoted under Rule 225 of the Indian Railway Establishment Code Vol. 1(1985 Edition) in the case of Group D employees, care should be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as a casual labour or as a substitute. Accordingly, the age declared by the worker at the time of initial engagement is the one to be acted upon. As per LTI Register, the age of the worker as on 21-4-1976 was 40 years and she had attained the age of superannuation i.e. 58 years on 30-4-94.

4. I do not find any substance in the contention of the Management as to the maintainability of the reference order. The Ministry of Railway is already on the party array and I do not think that the departmental officer is a necessary party for the effective adjudication of this dispute. The further contention that the superannuation is not a case of retrenchment is totally irrelevant. Any kind of discharge or termination of services can be the subject matter of an industrial dispute as revealed from Sections 2(k) and 2-A and also Serial No. 3 of Schedule II of the Industrial Dispute Act. Therefore, I find that reference order is maintainable under law.

5. In the written notes of arguments submitted by the learned counsel for the Management the contentions urged in the written objections have been reiterated placing reliance on the decisions of the Supreme Court in Secretary & Commissioner, Home Department V/s R. Kirubakaran—AIR 1993 SC

2647 and State of M.P. V/s R. P. Sharma AIR 1996 SC 2665 and also the decision of the Kerala High Court in Mariamma V/s State of Kerala 1997 (2) KLT 115. There can be no quarrel on the proposition that in normal course the date of birth/age declared by the workman at the time of joining the services shall be binding on him for all the purposes including superannuation and if the workman wants to correct the same, he must produce all the relevant documents necessary for carrying out the correction of date of birth.

6. I also agree with the contention of the Management that the subsequent declaration made by the worker in this dispute by filing affidavits attested by Notary and Judicial Magistrate of the First Class are not the conclusive proof for the correct date of birth. These affidavits containing self interested statement of the worker alone cannot be taken into account for determining the date of birth. In addition to Ext. W1 and W5 affidavits the worker has produced Ext. W8 horoscope written on palm leaf. But there is nothing in Ext. W8 to suggest that the said horoscope is in respect of the worker. The names of the worker and her parents are not mentioned in Ext. W8. Ext. W8 was also not proved by examining its author. The worker has not produced any other documents viz. the ration card, voters list, records relating to birth/death registrations maintained in the Panchayat/Village Office etc. to substantiate her claim that her date of birth is 16-12-52. In the absence of any such documentary evidence, the Management would have been justified in its refusal to carry out the correction of date of birth.

7. The above legal contentions now raised by the Management in these adjudication proceedings are highly belated. The subject matter of this industrial dispute had already been considered by the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 1941/93. This O.A. was disposed of by Ext. W6 order dt. 22-11-93 which is as follows:—

"Proof of Date of Birth attested by a Notary was not received by respondents, as the Permanent Way Inspector held the view that such a document will have to be attested by a Magistrate of First Class.

2. In the reply statement filed, respondents state that the affidavit attested by a Notary will be taken on record, and considered.

3. We are not called upon to decide any other matter. We record the submission and dispose of the application. No cost? "

8. A reading of the above order of the Administrative Tribunal indicates that this is a consent order as the Management instead of contesting the matter

by raising all the legal and tenable contentions, it had been agreed to take on record and consider the affidavit attested by a Notary. It is further observed from the above order that the only contention raised by the Management before the Administrative Tribunal was that the affidavit would have to be attested by Magistrate of the first class. A consent order is as good as an order on merit and in the present case the Management is liable to comply with Ext. W6 order. If the Management had a case that the age of the worker (40 years) declared by her on 21-4-76 and recorded in Ext. M1 LTI Register which contains here left thumb impression cannot be altered unless satisfactory documentary evidence is produced by the worker, such a contention should have been raised before the Administrative Tribunal. The Management had not raised such a contention, but entered the date of birth as 16-12-52 in the Service Register of the worker which the Management has produced before this court as per the direction in M.P. No. 5/97. The relevant entry is as follows:

“Date of birth (in words)—16-12-52 Sixteenth day of December Nineteen fifty two as per affidavit, subject to verification of LTI Register.

The underlined portion is seen subsequently inserted with different pen and ink. I am of the view that having agreed before the Administrative Tribunal to accept the affidavit attested by a Notary Public and accordingly entered the date of birth in the Service Register, it is not at all fair on the part of the Management to take a different stand and contest the matter a fresh before this Tribunal.

9. It appears that the worker had challenged Ext. W3 memo dt. 2-11-93 before the Administrative Tribunal. Ext. W3 runs as follows—

“On verification of the LTI Register, it is seen that you have declared your age as 40 years on 21-4-76. Accordingly your Date of Birth is 21-4-36. A certificate in proof of this was called from you. Now you have submitted an affidavit sworn before notary public stating your Date of Birth as 16-12-52 which is contrary to the original declaration made by you. The age declared by you at the time of your initial engagement and the date of birth furnished in the Affidavit differs, therefore it cannot be accepted. Hence you are requested to submit an affidavit in accordance with the age declared by you already, failing which action will be taken to record your Date of Birth in the Service Register as 21-4-36 for all purposes including Superannuation/retirement.”

10. From Ext. W3 dt. 2-11-93 it is clear that when the matter came up for final hearing on 22-11-93 before the Administrative Tribunal, the Management was well aware that the age declared by the worker as per Ext. M1 LTI Register was 40 years as on 21-4-76. But the Management unconditionally agreed to accept the affidavit attested by the Notary. In addition to Ext. W1 affidavit attested by Notary the worker had also submitted Ext. W5 affidavit dt. 4-5-93 attested by Judicial First Class Magistrate, Palakkad declaring her date of birth as 16-12-52. I find that by Ext. W6 order dt. 22-11-93 of the Administrative Tribunal, the Ext. W3 memo dt. 2-11-93 stands quashed and the Management is liable to accept Ext. W1 and W5 affidavits.

11. In the circumstances stated above, I am of the view that the Management is not entitled to take a stand before this Tribunal that Ext. W1 & 5 affidavits are unacceptable. As rightly submitted by the representative of the worker, the Management is estopped from taking such a contention before this Tribunal. In view of Sec. 28 of the Administrative Tribunals Act 1985 both the Administrative Tribunal and Industrial Tribunal are having concurrent jurisdiction to deal with the subject matter of this industrial dispute and in the present case the principle analogous to res judicate is also applicable as the Administrative Tribunal had already considered the matter as per Ext. W6 Order dt. 22-11-93.

12. In the result an award is passed answering the issues referred for adjudication in favour of the worker. The worker P. Kasu is entitled to the relief of reinstatement in service with back wages and all other consequential benefits.

Dated this the 5th day of December, 1997.

B. RANJIT KUMAR, Industrial Tribunal

APPENDIX

Witnesses examined on the side of the Management : Nil.

Witnesses examined on the side of the Worker : WW1—Smt. P. Kasu.

Documents marked on the side of Management: Ext. M1—Copy of relevant page of LTI Register. Documents marked on the side of Worker:

Ext. W1—Copy of Affidavit dt. 28-1-92.

Ext. W2—Copy of Office Order dt. 17-8-92.

Ext. W3—Copy of Memo dt. 2-11-93.

Ext. W4—Copy of representation dt. 18-11-93 of worker.

Ext. W5—Copy of Affidavit dt. 4-5-93.

Ex. W6—Copy of Order dt. 22-11-93 of administrative Tribunal, Ernakulam Bench in O.A. No. 1941/93.

Wxt. W7—Copy of Memo dt. 27-4-94.

Ext. W8—Horoscope.

नई दिल्ली, 26 दिसम्बर, 1997

का.प्रा.165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार लेबर कोर्ट, अर्नाकुलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-97 को प्राप्त हुआ था।

[संख्या एल-12012/353/91-आईआर बी-III,
12012/352/91-आईआर बी-III,
12012/351/91-आईआर बी-III]
सनातन, डेस्क अधिकारी

New Delhi, the 26th December, 1997

S.O. 165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on the 24-12-97.

[No. L-12012/353/91-IR(B-III),
L-12012/352/91-IR(B-III),
L-12012/351/91-IR(B-III)]

SANATAN, Desk Officer

ANNEXURE

IN CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM (LABOUR COURT, ERNAKULAM)

(Tuesday, the 30th day of September, 1997)

PRESENT :

Shri Varghese T. Abraham, B.A., LL.M.,
Presiding Officer.

Industrial Disputes Nos. 7 of 1992 (C), 8 of 1992 (C)
and 9 of 1992 (C)

In I.D. 7/92(C)

BETWEEN

The Deputy General Manager, State Bank of India,
Zonal Office, Shanmugam Road, Ernakulam,
Cochin-682031.

AND

The Vice President, State Banks Staff Union, 51, Kuruppusamy Maistry Street, K. K. Pudur, Coimbatore-641038.

In I.D. 8/92(C)

BETWEEN

The Deputy General Manager, State Bank of India,
Zonal Office, Shanmugam Road, Ernakulam,
Cochin-682031.

AND

The Vice President, State Banks' Staff Union, 51, Kuruppusamy Maistry Street, K. K. Pudur, Coimbatore-641038.

In I.D. 9/92(C)

BETWEEN

The Deputy General Manager, State Bank of India,
Zonal Office, Shanmugam Road, Ernakulam,
Cochin-680 031.

AND

The Vice President, State Banks' Staff Union, 51, Kuruppusamy Maistry Street, K. K. Pudur, Coimbatore-641038.

REPRESENTATIONS :

Sri K. K. Chandran Pillai,
Advocate, Azad Road, Cochin-17 .. For Management,
Sri. M. Ramachandran,
Advocate, Kochi-17. .. For Union.

AWARD

In I.D. 7/92(C)

The Government of India as per Order No. L-12012/353/91-IR-B.III dated 5-3-92 referred the following industrial dispute for adjudication :

"Whether the action of the management of State Bank of India in reverting Sri. N. M. Balan Nambiar, Record Keeper, Cannanore Branch of State Bank of India to Messenger with effect from 14-5-85 is justified ? If not, to what relief he is entitled to ?"

2. The case of the union is summarised as follows : The workman joined the service of the Management Bank as a messenger on 3-4-1959 at Calicut Branch. While so it was advised by the branch Manager that he has been selected to appear for the promotion test to be held on 11-2-1979. The test was actually conducted on 3-6-1979. The workman was intimated on 7-8-1990 that the bank have decided to appoint him as Record keeper (Clerical Grade) on probation for six months with effect from 1-2-1980 and he was posted in the Cannanore Branch. On 6-12-1982, he was asked by the Branch Manager to produce the original transfer certificate for scrutiny by the Regional Office. On 24-8-1983, the Disciplinary Authority asked him to show cause why disciplinary action should not be taken against him for having submitted a false certificate. He was charge sheeted on 22-9-1983 for the alleged misconduct of gaining entry to the test for promotion to the cadre of record keeper by producing a false certificate and got promoted to the clerical cadre with effect from 1-2-1980. The charge sheet is misconceived and unsustainable since he was never submitted any false certificate at any time. Originals of the certificate were verify at the time of his initial appointment it-self and particulars were entered into the service registers. As a matter of fact, the prescribed qualification for the promotion test was never made known to the workman, nor he had ever submitted any application for the same. The only sin committed by him was that he had relied on the direction given by the then manager and appeared for the promotion test. The workman faced a domestic enquiry at the instance of the management Sri. M. Basaw was appointed as the enquiry officer. The domestic enquiry was an empty formality and was violative of principles of natural justice and fairness. He was not provided with the list of witnesses and copies of documents on which the management had relied on in advance. He was not permitted to prove his innocence in the enquiry. The enquiry officer had relied on inadmissible evidence and even on fabricated documents. The findings are perverse. The

Disciplinary Authority had awarded the punishment of dismissal. The Appellate Authority ordered the reinstatement in the subordinate cadre as messenger. His reversion is illegal, unjustifiable and unsustainable. He proves for the declaration that the reversion order is illegal and for a direction to the management to promote him with all consequential benefits.

3. The defence.—The workman while working as a messenger appeared for a written test on 3-6-1979 for promotion as record keeper. He was entitled to get promotion only if he had passed the VIIIth standard. He came out successfully in the written test. He appeared for the interview on 26-9-1979. He produced a certificate to prove his educational qualifications. He produced the certificate to the effect that he had passed VIII standard. On that basis he was promoted. However, later it came to the notice of the Bank that the certificate produced by him was false. He made the bank to believe that he had passed VIII standard and he was promoted as Record Keeper. Domestic enquiry was fair, legal and valid. He was represented by the union officials. Enquiry was conducted strictly in accordance with the principles of natural justice. He was given sufficient opportunity to defend the charge to prove his innocence. After the close of the enquiry both parties submitted argument notes. It was thereafter that the enquiry officer considered the materials and submitted his report finding the workman guilty of the charges. Disciplinary Authority considered the report of the enquiry officer and decided to impose penalty of dismissal. He was served with a copy of enquiry report and show cause notice was also given with regard to punishment. It is thereafter that the dismissal order was passed. But the Appellate Authority though concurred with the findings of the enquiry officer and the disciplinary authority, took compassionate and lenient view. The workman was again reinstated as a messenger. It is after the lapse of more than 6 years that he complained before the Assistant Labour Commissioner (Central), Kochi. A joint discussion was held on November 8th, 1991. The present proceedings is hopelessly delayed. He was found guilty on the basis of a properly conducted enquiry. Subsequent to the written test, when the workman was passed the test and called for the interview and was requested to produce the qualification certificate. He had passed VIII standard. The certificate which he produced appeared to be certificate issued from AKKRHS, Chelannur. In that certificate it is stated that he had passed VIII standard. During the course of enquiry, the Head Mistress of the school was examined and she had proved Ext. P3, P4 and P1 as false. The evidence of PWs. 1 & 2 and documents on the side of the management amply proved the charges levelled against the workman. Even during the enquiry the workman was asked to produce the original certificate. The certificate produced by him is a copy of the transfer certificate wherein it is stated that he had studied in standard IX. This certificate has been disproved by the evidence of the Head Mistress. Ext. P1 certificate is dated 2-8-1952 whereas PW1 has deposed that the school started only on 3-6-1957. The Head Mistress had also deposed that there was no student bearing the name of the present workman as stated in the transfer certificate. She has also stated that Ext. P1 has not been issued from her school. The workman has not produced the original certificate. Even a duplicate copy is not produced. The entire controversy would have been settled if the workman has produced the certificate to show that he has passed the VIII standard either from the school in which PW1 was the Head Mistress or from any other school, if he had studied in any such school. A pass in the VIII standard is a pre-qualification for promotion to the post to which the workman was promoted. As he has not produced the essential qualification certificate he is not entitled for a promotion. Though the management detected the mistake, he is entitled to rectify it. The workman is not entitled to get any relief.

In I.D. 8/92(C):

4. The Government of India as per Order No. L-12012-352/97-IR B-III dated 6-3-92 referred the following industrial dispute for adjudication:

"Whether the action of the Management of State Bank of India in reverting Sri P. V. Vijayan, Cashier, Malaparambu Branch, to the post of messenger

w.e.f. 14-5-85 is justified. If not, to what relief Sri P. V. Vijayan is entitled to?"

5. The averments in I.D. 7/92(C) and these in this case are the same. In this case the workman was promoted as cashier w.e.f. 1-2-80. It was at that time as was called upon to produce the original certificate. The same enquiry officer conducted the enquiry. The management accepted the report and the disciplinary authority awarded a punishment of dismissal. The Appellate Authority, as per order dated 2-8-85 ordered reinstatement of the workman in the cadre as a messenger.

6. The defence contentions are the same as that of I.D. 7/92(C). In this case the charge against the workman is that he produced a false certificate and thereby made the bank to believe he has passed VIII standard. The entire procedural formalities are complied with for conducting the enquiry. According to the management the interview was on 26-8-79 and delinquent produced certificate on 15-10-79. That certificate showed that he had passed VIII standard from the Government H.S. for Boys, Perinjalam. In this case also the Head Mistress of the school was examined. She has denied the certificate produced by the workman. The personal investigation was made by PW2 and it revealed that the delinquent has not passed VIII standard, but his name was removed from the date of opening of the school after the annual vacation. These witnesses were not cross-examined by the delinquent. All other contentions are same as that of I.D. 7/92.

In I.D. 9/92(C):

7. The Government of India as per Order No. L-12012/351/91-IR-B/III dated 6-3-92 referred the following industrial dispute for adjudication:

"Whether the action of the management of State Bank of India in reverting Sri P. P. Prasanna, Bill Collector, State Bank of India, Calicut Branch, as messenger w.e.f. 14-5-85 is justified? If not, to what relief Sri P. P. Prasanna is entitled to."

8. The averments in the claim are the same as that of the other workmen in other two industrial disputes. In this case the workman was promoted to the clerical cadre w.e.f. 1-2-90. He also initially joined as messenger. While he was working as a clerk, he was called upon to produce the original certificate. He did not produce. The show cause notice was issued as to why disciplinary action should not be taken against him for submitting the false certificate. He was charge sheeted on 26-9-83 for the alleged misconduct of gaining entry to the test of promotion by producing a false certificate and got promoted to the clerical cadre with effect from 1-12-80. He also attended the domestic enquiry which was valid and legal.

9. The defence case of the management is the same as that of the other two cases. According to the management, the employees mislead the bank by producing the certificate and made the bank to believe that he has passed VIII standard and he was promoted as a Bill Collector. The show cause notice was given to him. Since the explanation was found unsatisfactory, the charge sheet was served on him. The same enquiry officer conducted the enquiry in accordance with the principles of natural justice, Fair play and equity. He further contended that at the time when the delinquent was a messenger initially he produced the certificate which will show that he has studied in the VIII standard. It was on the basis of that material that he was called upon to appear for the written test. Subsequent to the written test the delinquent produced the certificate showing that he has passed VIII standard. That certificate was issued from Government H.S. for Boys, Parayancheriyil. The Head Mistress of that school was also examined and she had proved Exts P5 and P6. It has come out that he had not chosen to produce any materials to show that he has actually passed VIII standard. He was called for the test under the impression that he has passed VIII standard. The pass in the 8th standard is a pre-qualification for promotion. The other contentions are the same and hence not repeated.

10. MW1. was examined. These three cases are tried jointly. MW1, the enquiry officer was examined on the side of the management. Exts. M1 to M21 were also marked.

11. The points which emerge for consideration are :

- (i) Whether the domestic enquiry held against the workman in the above cases was legal, valid and proper?
- (ii) Whether the charges levelled against these workmen are proved
- (iii) Whether the workmen in all or any one of the cases is entitled to any relief under industrial law? If so, to what extent?

12. Point Nos. (i) and (ii) : MW1 is the domestic enquiry officer. At that time he was the officer of the Bank, Ext. M1 is the enquiry file relating to the workman in I.D. No. 7/92(C), Ext. M2 is the enquiry file in I.D. 8/92(C), Ext. M3 is the file relating to the workman in I.D. 9/92(C). Notice of enquiry was given to all the workmen. They were given full opportunity to cross examine the management witness and defend their case through union officials. Exts. M4 to M6 relate to the entire enquiry proceedings in I.D. No. 7 to 9/92(C). MW1 says that there was no defence representation for the workman in I.D. 8/92. List of witnesses and documents were furnished to all the three workmen. The management has a presenting officer. Enquiry was held in the presence of the employees. All of them signed in Exts. M4 to M6. He was sworn that the defence representatives in I.D. Nos. 7 and 9/92 cross examined all the witnesses. The workman in I.D. 8/92 also participated in the enquiry. He emphatically says that the domestic enquiry was held strictly in compliance with the principles of natural justice. Ext. M7 is the transfer certificate of the workman in I.D. 7/92. Ext. M8 is the letter submitted by the workman, Balan Nambiar, to the Branch Manager, Cannanore, Ext. M9 is the letter sent to the Chief Regional Manager of the Management Bank, from the AKKRHS, Chelannur. Ext. M10 is the letter submitted by the Headmistress of the above school to the Chief Regional Manager. Ext. M11 is the letter addressed to the Regional Manager by the workman. Ext. M12 to M15 are the documents relating to the workman in I.D. 8/92(C). Likewise, Exts. M16 to M21 are the documents relating to the workman in I.D. 7/92(C). All these documents were exhibited at the time of enquiry. Ext. M1 is the file relating to Balan Nambiar who is the workman in I.D. 7/92(C). It can be seen that the enquiry was conducted fairly and properly. The enquiry officer has found that the transfer certificate produced by the workman is false. The case of the workman that the certificate was obtained by his paternal uncle was negated by the enquiry officer, as the Headmistress of AKKRHS, Chelannur has stated that there was no pupil by name Balan Nambiar on rolls of that school during the period 3-6-1957 to 30-7-1981 and that the case of the management that the certificate produced by the workman to the bank is false one. Thus charge against him that he has not passed the 8th standard and that he has produced the false certificate, purported have been issued by AKKRHS showing that he has passed VIII standard with a view to mislead the bank. The enquiry officer has made a thread bare discussion of the entire evidence and came to the conclusion of the delinquent committed the alleged misconduct. Ext. M1 will further indicate that the workman was given personal hearing and he submitted his defence as against the findings of the enquiry officer. An appeal was also preferred by the workman.

13. Ext. M2 is the file relating to the workman Sri P. V. Vijayan, cashier of the bank in I.D. 8/92(C). He has also given a charge sheet stating that he produced a false certificate stating that he has passed VIIIth standard and he gained entry into the test for promotion. In this case also the Headmistress of Government H.S. for Boys, Parayancherry, was examined as PW1. She has stated that the delinquent has not passed 8th standard and that the school issues certificates only on stamp paper and not on a plain paper as has been done in this case. PW2, the officer in the bank has stated that he obtained the report that the delinquent did not pass 8th standard from Government H.S. for Boys, Parayancherry, that he went to the school and met the Headmistress in-charge and ascertained whether the delinquent completed VIIIth standard. He got information that the delinquent did not complete the VIIIth standard. But his name was removed from the register due to continuous absence of 5 days from the date of opening of the school after annual recess. In this case also the workman was given sufficient

opportunity to defend the charge. Evidence was recorded in his presence. The enquiry officer in his report discussed the entire matter and carefully scanned the evidence on record and came to conclusion that the delinquent produced certificate to the Bank which was false and fabricated. So the enquiry officer came to the conclusion that the charge against the workman is proved. He preferred an appeal before the Appellate Authority. He was given personal hearing by the enquiry officer. The Appellate Authority converted the order of dismissal into reversion to the rank. Thus in I.D. 8/92(C) also the enquiry was fairly and properly conducted.

14. Likewise, is the case of P.P. Prasannan, the workman in I.D. 9/92(C). In this case also the workman was defended properly. The enquiry officer has given him sufficient opportunity. There is sufficient evidence that the employee has not produced any evidence from the school or other source to prove that he has passed VIIIth standard. Thus it was found on the basis of evidence that the certificate produced by him was false. He was also given personal hearing. He was also preferred an appeal. The Appellate Authority, based on the plea of mercy by the workman reduced the punishment and took lenient view by reduction of rank. Thus the entire evidence on record will show that the domestic enquiry was legally and properly held with due compliance to the principles of natural justice. The domestic enquiry cannot be attacked on any of the grounds known to law. Findings in all these cases are supported by satisfactory evidence. Principles of natural justice are strictly complied with. Therefore, I hold that the domestic enquiry is legal, valid and proper. The charges against these workmen as narrated above are truly proved.

Points so found.

15. Point No. (iii) : The punishment imposed on the workman in all these three cases fall short of dismissal, discharge or termination of service. In such cases, Labour Court is not empowered to interfere under section 11A of the I.D. Act. When the domestic enquiry is found proper and legal and the charges is found established, the Labour Court cannot interfere in minor punishments like these given to the workmen in these three cases. So no interference is called for. The workmen are not entitled to get any relief under industrial law. Point so found.

In the result, the reference in all these cases are answered against the workmen holding that the punishment imposed on them are legal, valid and proper and that the workmen in all these cases are not entitled to get any relief under industrial law.

Ernakulam,
30-9-1997.

VARGHESE T. ABRAHAM, Presiding Officer

APPENDIX

Witness examined on the side of Management :

MW1 : Sri M. Easaw.

Exhibits marked on the side of Management :

Ext. M1. Enquiry file relating to I.D. 7/92(C).

Ext. M2. Enquiry file relating to I.D. 8/92(C).

Ext. M3. Enquiry file relating to I.D. 9/92(C).

Ext. M4.

Ext. M5.

Ext. M6.

Note books contains the enquiry proceedings.

Ext. M7. Copy of Transfer certificate dated 2-8-52.

Ext. M8. Letter submitted by N. M. Balan Nambiar to Branch Manager, S.B.I., Kannur, dated 24-12-82.

Ext. M9. Letter submitted by the Headmistress to the Chief Regional Manager, S.B.I., Trivandrum dated 3-2-83.

Ext. M10. Letter of Headmistress to the Bank Manager dated 3-12-82.

Ext. M11. Letter submitted by N. M. Balan Nambiar to the Regional Manager, S.B.I., Trivandrum.

Ext. M12. School Admission extract in respect of Sri Vijayan dated 15-10-79.

Ext. M13. Photo copy of Extract from the Admission Register in respect of Ramakrishnan K. N.

Ext. M14. A letter from Headmistress, Government H.S. for Boys, Parayancherry dated 20-11-82.

Ext. M15. Letter submitted by P. V. Vijayan to the Branch Manager, S.B.I., Malaparambu.

Ext. M16. Letter submitted by P. P. Prasannan, Bill Collector to the Branch Manager, S.B.I., Calicut dated 1-2-93.

Ext. M17. A letter addressed to Sri P. P. Prasannan by the S.B.I., Calicut dated 9-3-83.

Ext. M18. Letter submitted by Sri P. P. Prasannan to the Branch Manager, S.B.I., Calicut dated 18-3-83.

Ext. M19. Letter submitted by Sri P. P. Prasannan to the Branch Manager, S.B.I., Calicut dated 2-4-83.

Ext. M20. Letter from Government H.S. for Boys, Parayancherry submitted to the Regional Manager, S.B.I., Trivandrum dated 6-5-83.

Ext. M21. Letter from Headmaster of Government H.S. for Boys, Parayancherry dated 19-10-83 to the S.B.I., Regional Manager, Trivandrum.

